



Draft Water Bill

July 2012



Draft Water Bill

Presented to Parliament
by the Secretary of State for Environment, Food and Rural Affairs by Command of Her Majesty
July 2012

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Section	Page number
Foreword by the Secretary of State for Environment, Food and Rural Affairs	4
Foreword by the Minister for Environment and Sustainable Development	5
Section 1 – Introduction	6
Publishing the draft Bill for pre-legislative scrutiny	6
Scope of the draft Bill	7
Taking the draft Bill forward	14
Section 2 – The proposals and their intended effects	16
Section 3 – Devolution	26
Section 4 – The draft Water Bill	27
Section 5 – Explanatory Notes	158
Section 6 – Summary Impact Assessment	186
Glossary	206

Foreword by the Secretary of State for Environment, Food and Rural Affairs



Water is essential for economic growth, and the water industry has a vital role in the transition to a greener economy. A green economy needs a sustainable, resilient, affordable water supply. But it also needs an energised, innovative, water industry. Over the last twenty years our water industry has successfully delivered improved infrastructure and high quality drinking water while reducing its impacts on the environment and keeping bills affordable.

But it now faces some tough challenges. The dry years and periods of drought we have experienced recently are likely to become more frequent in the future as our climate changes. At the same time, a growing population is likely to put more pressure on our available water resources.

The challenge is not just to keep other industries and households supplied with water, while keeping our rivers, lakes and aquifers healthy. It is also to innovate and develop expertise, for example, in leakage detection, water efficient technologies and treatment of water and wastewater. And it is to strengthen the range and quality of services water companies offer to their customers.

We set out a wide ranging response to these challenges in our Water White Paper, *Water for Life*, including a commitment to legislate to deliver reform of the water sector. By increasing choice for business customers and public sector bodies, encouraging innovative new entrants into the market and securing future investment, the package of reforms set out in the draft Bill will boost the water sector's ability to deliver the resilient, sustainable and customer-focused services that are needed.

Work on this Bill is just part of our wider efforts to prepare for a reformed water supply market. We are working alongside industry, stakeholders and regulators to develop the practical steps toward market opening in England. We are also exploring with the Scottish Government how we can create a cross-border market in water and sewerage retail services.

This Bill will enable us to deliver an important package of reforms, delivering real benefits for water customers and improved stewardship of our precious water resources. We look forward to hearing your views, and trust that the process of pre-legislative scrutiny will ensure that the Bill is well prepared for introduction to Parliament.

A handwritten signature in black ink that reads "Caroline Spelman". The signature is written in a cursive, flowing style.

Caroline Spelman MP

Foreword by the Minister for Environment and Sustainable Development



Water is a valuable asset in Wales. The sustainable management of water is key to realising the maximum benefit and value from this resource. Under our Living Wales Programme the Welsh Government is taking forward a new approach to managing the environment and natural resources in Wales. This approach will help us make the right decisions to balance all the demands we put on our natural resources.

The water industry in Wales is a key player in managing water resources sustainably. As in England over the past twenty years we have seen significant investment by the water industry resulting in improved services to customers and a reduction of environmental impacts. There is however more to do and further challenges to meet. The Welsh Government believes in putting customers at the heart of delivery. In the face of climate change, population pressures and the economic climate we want the water industry in Wales to focus on delivering innovative, customer-focused water and sewerage services that present value for money at the same time as protecting the environment.

The Welsh Government recognises that the UK Government intends to implement its Water White Paper vision to introduce a package of reforms within this draft Water Bill to extend the existing competition regime in the water sector in England. However, the Welsh Government has not fully consulted on options for market reform in Wales and therefore does not have a complete evidence base or full understanding of the views of stakeholders to take this policy area forward in Wales at present.

The Welsh Government is currently working on developing an evidence base to include mechanisms that will drive innovation and improvements in the water industry in order to secure the best outcome for the water industry and its customers in Wales. A key element of the forthcoming Water Strategy for Wales's consultation will be to explore the appropriate role of market reform and regulatory mechanisms in driving improvement and innovation in the industry.

As part of exploring options for market reform in Wales, the Welsh Government will draw on experiences of other sectors. The evidence gathered will be used as a basis to decide what approach will be suitable for Wales. The Welsh Government intends to consider future policy options as part of our Water Strategy consultation.

A handwritten signature in black ink, appearing to read 'John Griffiths'.

John Griffiths AM

SECTION 1 – INTRODUCTION

Publishing the draft Bill for pre-legislative scrutiny

Why we have this document

1. As well as containing the draft Water Bill itself, this document explains the context and rationale for the measures in the Bill:

Section 1 sets out the main reasons why the UK Government considers this legislation is required. Matters of interest to the Welsh Government are also highlighted throughout this section. **(NB: Unless otherwise stated references to “Government” or “the Government” in this Command Paper should be taken to mean UK Government only.)**

Section 2 outlines the background to and the proposed content of the Bill, summarising its key elements.

Section 3 explains how the Bill extends to Wales and Scotland and the decisions still to be made in this regard.

Section 4 contains the draft Bill.

Section 5 contains the Explanatory Notes to the Bill. These provide an outline of the effect of the clauses.

Impact assessments have been produced for each of the substantial elements of the Bill. They are brought together in the Summary Impact Assessment in Section 6.

Pre-legislative scrutiny and the legislative process

2. The Government is committed where possible to publishing Bills in draft for pre-legislative scrutiny before they are formally introduced to Parliament. This is to improve the scrutiny of Bills and draw the wider public more effectively into the Parliamentary process.
3. Pre-legislative scrutiny allows for thorough consultation on the Bill, ensuring that both Parliament and stakeholders have the opportunity to comment before the Bill is finalised for introduction into Parliament. The Committee holding the inquiry into the draft Bill will usually issue a call for written evidence before holding public evidence sessions. The Minister responsible for the Bill is likely to be asked to give oral evidence during this evidence gathering phase.
4. Following the oral evidence sessions the Committee will then issue its report.
5. It is usual for the Government to make a formal response to the Committee’s report – though in some cases, for example where all the recommendations are accepted, the final Bill itself may serve as a response. It is for the Government to decide whether or not to accept the Committee’s recommendations for changes to the draft Bill.
6. Once the Bill is introduced – which is always subject to space being available in the legislative programme – it is put to a series of debates and suggested amendments in the Commons and the Lords. Subject to their agreement, the Bill ultimately goes for Royal Assent at which point it becomes an Act. The timetable for the provisions in the Act coming into force is set out in the Act itself – though the default is usually no earlier than two months after Royal Assent. For more on the process see Parliament’s web pages¹.
7. We expect that the House of Commons’ Environment, Food and Rural Affairs Select Committee will lead the scrutiny of the draft Water Bill.

¹ <http://www.parliament.uk/about/how/laws/passage-bill/>

8. You can also send your comments direct to:
waterwp@defra.gsi.gov.uk

or

Water Bill Team
Defra
Area 2C
Ergon House
Horseferry Road
London
SW1P 2AL

9. If you have comments specific to policy development in Wales you can also contact:

Water Policy Branch
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Scope of the draft Bill

10. The Government's Water White Paper, *Water for Life*² and the accompanying *Case for Change*³ set out the challenges facing the water and sewerage sectors in the coming decades. While £98 billion has been invested since privatisation to address pollution, upgrade infrastructure and improve drinking water quality to some of the highest standards in the world, the remaining challenges of pollution and over-abstraction mean that only around a quarter of our water bodies are fully functioning ecosystems, water resources are already under pressure and, unless we act, over time there is likely to be less water available for people, businesses and the environment.
11. The Government is already undertaking work in many areas to meet these challenges – some of which is outlined below. To meet the vision of a more efficient, innovative and customer-focused water industry the Government announced its intention in the White Paper to legislate for structural reforms to the water and sewerage market, to make complementary changes to Ofwat's powers to regulate the industry, and to reduce administrative burdens in the management of water resources and the water environment.
12. In September 2011, the Welsh Government published its *Programme for Government*⁴ including its policy priorities and key actions for the delivery of water and sewerage services in Wales. The Welsh Government has been working actively with the water sector to take forward these commitments, making significant progress since the Programme's publication. This builds on the wider commitments in relation to water in Wales set out in *the Environment Strategy for Wales*⁵, *the Sustainable Development Scheme – One Wales: One Planet*⁶, *the Climate Change Strategy for Wales*⁷, *the Strategic Policy Position Statement on Water*⁸ and the Written Statement on Water Policy in Wales made by John Griffiths, Minister for Environment and Sustainable Development in December 2011⁹.

2 <http://www.defra.gov.uk/environment/quality/water/legislation/whitepaper/>

3 <http://www.environment-agency.gov.uk/research/planning/33088.aspx>

4 <http://wales.gov.uk/about/programmeforgov/>

5 <http://wales.gov.uk/topics/environmentcountryside/epq/envstratforwales/>

6 <http://wales.gov.uk/topics/sustainabledevelopment/publications/onewalesoneplanet/>

7 <http://wales.gov.uk/topics/environmentcountryside/climatechange/publications/strategy/>

8 <http://wales.gov.uk/topics/environmentcountryside/epq/waterflooding/publications/statement2011/>

9 <http://wales.gov.uk/about/cabinet/cabinetstatements/2011/12decemberwaterpolicy/?lang=en&status=closed>

13. *The Programme for Government* included a commitment to develop a Water Strategy for Wales. The Welsh Government will consult on proposals for the Strategy this winter and explore the appropriate role of market reform and regulatory mechanisms in driving improvement and innovation in the industry. The evidence gathered along with the outcome of the scrutiny of this draft Bill will be used as a basis to decide what approach will be suitable for Wales.

Reform of the water and sewerage industry

14. The water industry in England and Wales was fully privatised in 1989. Ten water and sewerage companies were created from the publicly owned Regional Water Authorities. These were floated on the stock market, joining the twenty nine, generally much smaller, private water supply companies already in existence. Today, after some consolidation among the smaller companies, there are ten water and sewerage companies and eleven water only companies.
15. The water sector is unlike other utility sectors as currently only businesses which use large volumes of water have any choice over their supplier. Customers are almost always supplied by their local monopoly company. This leaves little scope for most business customers to choose the supplier and services that meet their needs. As a result, water companies' customer service levels and efficiency are driven by targets set by Ofwat.
16. In an attempt to address this, the Water Act 2003 put in place a framework for a limited retail market for water, enabling very large water users to switch suppliers and new players to enter the market. The regime has not worked well. Ofwat regulates just seven water supply licence (WSL) holders. Only one of these has a customer – the only customer to have switched under the initial regime. Restricting the ability to switch to a water supply licensee to very large water users has meant the competitive market is too small to develop. Barriers in legislation make the market unattractive to new entrants and have frustrated customers that want to switch suppliers. Additionally, through the 'New Appointments' (or 'inset') regime which allows developers of greenfield sites to choose alternative suppliers to the local water company, there are only six New Appointees. There are therefore thirteen 'new entrants', and six of these are subsidiaries of the twenty one incumbent water companies.
17. Government has already taken the first steps to expand the size of the market to some 26,000 customers. In December the water use threshold at which customers in the areas of undertakers based wholly or mainly in England¹⁰ are entitled to switch suppliers was reduced from fifty million litres a year to five million litres a year. However, further reform is required for this to become a more effective market.
18. The Welsh Government has retained the threshold at fifty million litres a year for the areas of water undertakers based wholly or mainly in Wales¹¹. The Welsh Government is monitoring the situation in England as result of the threshold reduction and is currently scoping options for Wales.
19. The case for reform of the water industry in England to develop more competitive markets was set out in the Water White Paper and its accompanying impact assessments. The White Paper built on Martin Cave's *Independent Review of Competition and Innovation in Water Markets*¹². Cave recommended that change should be evolutionary and introduced step by step. The Water White Paper set out the Government's plans for such an evolutionary reform, building on the strengths of the current industry structure and regulatory regime. This set out clear limits on the scope and pace of change.

10 This includes the area of Severn Trent Water which extends into mid-Wales.

11 These are currently the areas of Welsh Water and Dee Valley Water which extend into western England and Albion Water – an inset appointee serving sites in Wales and England.

12 <http://www.defra.gov.uk/publications/2011/12/06/cave-review/>

20. The draft Bill now takes forward the legislative changes set out in Chapter 5 of the Water White Paper under *“Reforming the market for business customers”* and *“Protecting customers”* pp.68-77. These include:
- allowing all business and other non-household customers in England to switch their water and sewerage suppliers;
 - removing some of the existing regulatory requirements that act as a barrier to new entrants wishing to enter the market;
 - allowing for Ofwat, other regulators and market participants to establish market codes to help new competitive markets run more effectively;
 - facilitating the development of a seamless retail market for water and sewerage services by reducing burdens for operators that wish to supply services both in Scotland and in England and to eligible water supply customers in Wales;
 - introducing a more flexible upstream pricing regime, and allowing increased opportunities in the upstream supply sector;
 - stimulating wholesale markets in water supply and sewerage services by extending opportunities for new entrants to offer alternative supplies and services to customers and to other new entrants;
 - reforming the special merger regime to exclude more mergers from automatic referral to the Competition Commission by introducing a two-tier referral system allowing some water companies seeking to take over another water company to avoid a referral by making undertakings in lieu; and
 - reforming the connection charges regime to help facilitate housing growth.
21. The Government believes that a combination of greater pressure on suppliers from customers entitled to switch and new players will create a more vibrant and competitive market and bring new ways of working to the water sector. For example, the upstream reforms in the Bill will help increase interconnectivity and unlock new supplies of water, while reform to the retail market should encourage greater provision of water efficiency advice to business customers.
22. The impact assessments which accompanied the White Paper suggested our reforms could deliver around £2 billion of benefits to the economy over thirty years. But in reforming the water and sewerage sector it is important to strike a careful balance. There are many advantages of the existing system which the Government wishes to retain alongside securing the benefits from reform. The water sector has been successful since privatisation at securing investment to improve water and sewerage infrastructure and deliver higher environmental standards. The sector will need to continue to attract competitively priced investment to enable it to build resilience, protect the environment and continue to serve customers at a price they can afford.
23. The changes set out in the draft Bill will remove the existing legislative barriers to the effective operation of retail and upstream competition in the water industry. However, facilitating the development of a seamless retail market with Scotland for water and sewerage services will require much work beyond the introduction of legislation.
24. Government wishes to set an ambitious but achievable goal for market opening, working in partnership with regulators, customers and market participants. High-level analysis of the inputs required suggests that a realistic target date is likely to be April 2017. However, we will confirm this through the development with key players of a roadmap to market opening. We will also review progress towards this date regularly.

25. Government recognises that the process for implementing these reforms must be an inclusive one, designed to draw on the considerable experience and expertise of those market participants who will ultimately be responsible for its success.
26. We will establish a High Level Group (HLG) tasked with driving the process forward. We have invited the Scottish Government to join this group. We intend that membership will include representatives of each Government, and regulators, market participants and customers from England and Scotland. Much of the detailed work to develop the competitive market will need to be taken forward by the industry on behalf of the industry. The HLG will therefore establish a number of industry-led work-streams. The HLG will report directly to Ministers, advising them on progress towards delivery of the commitments set out in the Water White Paper.

Regulating the market

27. The market for water and sewerage services will remain a regulated market. The approach Ofwat takes to regulating the sector needs to reflect the Government's objectives for increasing competition. We also want to modernise Ofwat's regulatory powers to reflect broader Government ambitions around reducing red tape and taking a proportionate, risk-based approach to regulation.
28. A new strategic policy statement to Ofwat, to be published later this year, will set out the outcomes the Government wishes to see from economic regulation. This will include reinforcing the strong steer in the White Paper on the Government's objectives on competition, and how these should be balanced against the priorities of maintaining a stable regulatory environment, attractive to investors.
29. The new approach to retail competition will require Ofwat to introduce safeguards and monitor market activity closely. Ofwat already has some of the tools in place. For example, the regulator will need to use its licence and competition powers smartly, to prevent incumbent companies from discriminating against new entrants either through the prices they charge for wholesale water supply and access to their water supply and sewerage systems, or by other non-price related forms of anti-competitive behaviour. Market codes will be introduced to help regulate the industry and provide a level playing field for new entrants.
30. Ofwat's information gathering powers will be strengthened. The regulator will also be allowed to impose financial penalties for certain water company infringements up to five years after the infringement occurred, as opposed to one year as is currently the case. This will allow Ofwat to investigate potential breaches discovered in the course of gathering performance information and remove the incentive for water companies to delay reporting infringements.
31. The Government intends that customers will be protected through a new statutory code on mis-selling while developers will benefit from more transparent rules on charging for connections to the water supply and sewerage system.
32. The draft Bill also sets out changes to the way Ofwat oversees charging in the sector. Reflecting the Government's regulatory reform agenda, Ofwat will be able to take a lighter-touch, risk-based approach to approval of charging schemes. This will enable them to protect customers more efficiently by focusing resources on riskier charging proposals rather than being required to approve every element of every company's charges scheme each year.
33. The Welsh Government is supportive of Ofwat's newly proposed risk-based approach to regulation and both governments are working closely with the regulator to ensure any difference in policy is reflected in the regulatory framework.

34. The Welsh Government is committed to ensuring that Welsh customers are not disadvantaged by two different regulatory frameworks and is currently considering the appropriate role of market reform and regulatory mechanisms for Wales.
35. The Water Strategy for Wales will set the policy direction for Wales and where appropriate the Welsh Government will consult on aspirations for the economic regulation of the water industry in Wales.

Water Resources Management

36. The Ofwat Review¹³ and an independent review of the Water Resources Management Planning process¹⁴ both recommended that the UK and Welsh Governments and the regulators should improve co-ordination between the separate planning processes in the water sector and minimise burdens on companies. A more streamlined process would enable companies to develop integrated plans and improve outcomes for customers and the environment. Ofwat, the Environment Agency and the Drinking Water Inspectorate have agreed to strengthen their working relationships to provide clear signals to the companies on delivering outcomes. Both governments have worked closely with them, in particular to produce revised Water Resources Planning Guidelines that take account of the recommendations from the reviews. As part of the move toward better alignment of the various planning processes, the Bill will change the statutory timeframe for Drought Plans to a five yearly maximum cycle, as for Water Resources Management Plans. This will give us greater scope to enable the alignment of the water resources planning cycle with Ofwat's quinquennial price reviews. To this end the Bill includes an enabling power which will allow the current planning period of five years for Water Resources Management Plans, as well as the new period for Drought Plans, to be amended to align with other water planning cycles.
37. The Bill also repeals an outdated obligation on the Environment Agency to keep separate records of maps showing its resource mains and waterworks.

Environmental Permitting

38. The independent Penfold Review¹⁵ into non-planning consents made several recommendations to Government on ways of reducing burdens on developers, in particular by improving the interaction between the planning and non-planning consent systems. The Review commended the Environmental Permitting Regulations (EPRs) as the basis for environmental regulation. The EPRs have over the past five years consolidated a wide range of related, but previously separate, Environment Agency and local authority consenting regimes, covering for example large industrial installations, waste operations, mobile plant, radioactive substances activities, water discharge and groundwater activities. Rather than operators having to apply to regulators for a range of different consents, the regime allows operators to apply for one permit covering all these activities.
39. The number and extent of current consenting requirements can still be complex for both industry and regulators. In November the Government announced its intention to expand upon the Environmental Permitting programme and add more consents into it.
40. The Bill would enable the extension of the scope of the environmental permitting regime (which cover England and Wales) from prevention of pollution to include water abstraction and impounding licences, flood defence consents and fish pass approvals.

13 <http://www.defra.gov.uk/publications/2011/07/06/pb13587-ofwat-review-2011/>

14 <http://www.defra.gov.uk/publications/files/pb13653-water-resources-review.pdf>

15 <http://www.bis.gov.uk/penfold>

The Wider Policy Agenda

Highlights since the Water White Paper

41. The Water White Paper, *Water for Life*, set out a range of commitments to help make the transition to a resilient and sustainable water sector. Publication of this draft Bill marks delivery of one key commitment; and we can also report good progress in other areas, many of which do not require legislation. The Government's approach is only to introduce legislation where it is needed, and to look first at alternative ways of delivering our goals. Where changes to statute are required we will introduce legislative proposals, but we recognise that alternative approaches can often be quicker to deliver results, more flexible, and able to drive innovation and behaviour change more effectively than regulation.
42. The White Paper recognised the need to tackle the unsustainable abstraction we have today, and to reform the abstraction regime which has been in place since the 1960s to make sure it is fit for the challenges of the future. We want to put in place a smarter, more flexible abstraction regime which will enable abstractors to respond to variations in water availability as the climate changes, providing clear signals on the need to plan and invest for the future. This is a significant programme of reform, which may involve changing over 30,000 abstraction licences, and which creates risks and uncertainty for abstractors. The Welsh Government will take the opportunity in its forthcoming Water Strategy consultation to consider some of the changes needed to abstraction licensing, to ensure it is fit for purpose and affords the Environment Agency the necessary flexibility to manage water abstraction appropriately.
43. We have therefore put in place new arrangements to work closely with abstractors to ensure that we have a strong evidence base to underpin design of a new regime and understand the impact that the transition would have on their businesses.
44. The UK Government will formally consult on detailed proposals for abstraction reform by the end of next year and we plan to legislate to deliver change in the next Parliament. Implementation will then be phased to minimise disruption to abstractors and allow the reforms to be tailored to the circumstances of different catchments.
45. A reformed abstraction regime will enable us to manage our available water resources more effectively with benefits for abstractors and for the environment, particularly at times when water is scarce; it is not the route for tackling the unsustainable abstraction we face today.
46. We are committed to using, and improving, the tools at our disposal now to reduce environmentally damaging abstraction and prepare for transition to a new regime. Since the White Paper was published, we have made good progress, working with the Environment Agency and Ofwat on including water company solutions to unsustainable abstraction in the next price review. We have consulted on using the power in the Water Act 2003 to remove or vary licences causing serious damage to the environment without compensation. Ofwat has also confirmed in *Future price limits – statement of principles*¹⁶ its proposal to disincentivise damaging abstraction through the Abstraction Incentive Mechanism (or AIM). The Environment Agency continues its Restoring Sustainable Abstraction programme which has so far reviewed thousands of licences, publishing a progress report earlier this year¹⁷.
47. Last year, the Government launched its new catchment-based approach to improving water quality. We launched 25 pilots that will run until the end of this year, ten are 'hosted' by the Environment Agency and fifteen by external stakeholders, with the aim of identifying and engaging key stakeholders, sharing evidence of local pressures and planning action to tackle them. We are supporting a further 41 other organisations that have expressed an interest

¹⁶ http://www.ofwat.gov.uk/future/monopolies/fpl/pap_pos201205fplprincip.pdf

¹⁷ <http://www.environment-agency.gov.uk/business/topics/water/32026.aspx>

in playing a hosting role in other catchments. In March, we launched the 'Love Your River' campaign, with the aim of building the connection in people's minds between water use in the home, what ends up in our drains and sewers and the effects on our local environment. We are continuing to improve our understanding of what motivates individuals to adopt water efficient behaviours and the barriers to them doing so. This work will be completed this year. We are also taking practical steps such as establishing the 'Water Using Products Working Group' to boost sales of water efficient baths, sinks, showers and toilets through better labelling and advice to customers. Our impacts are not just reduced by using less water. This has been vital during the recent drought, but the floods which followed have also shown the importance of embedding sustainable drainage systems in new developments to help reduce pressure on our sewer system and alleviate flood risk. Shortly after the White Paper's publication we consulted on detailed proposals to implement the sustainable drainage system provisions from the Flood and Water Management Act 2010.

48. Water must remain affordable for all. To help households most at risk of water affordability problems we have recently issued guidance to Ofwat and water companies on the introduction of company social tariffs. This means every water company is now able to choose to use cross-subsidies in its charges schemes to reduce the bills of its most hard-pressed customers, using this mechanism to reinforce the package of help companies already offer to those struggling to pay their bills. We have also consulted on options to reduce the bad debt which currently adds £15 to the bills of households who pay. In addition, we have passed legislation to tackle other pressures on household water bills. The Water Industry (Financial Assistance) Act 2012 enables us to fulfil our commitment to reduce the historically high bills of household customers of South West Water so that they can receive a £50 reduction in their bill from April 2013. It also included a power to facilitate and reduce the costs of financing the Thames Tunnel and reduce the impact on bills.
49. The Water White Paper outlined the importance of the water resources planning regime in preparing for the future, and committed to translating policy priorities into a clear direction for companies. We recently published the water resources planning guideline¹⁸ to help companies prepare their twenty five year forward look plans within the broader context of supply challenges through to 2050. These will be followed later this year with a new strategic policy statement to Ofwat on the outcomes Government is seeking from economic regulation in the water sector.

Policy in Wales

50. John Griffiths, Welsh Government Minister for Environment and Sustainable Development issued a Written Statement in December¹⁹ which set out water policy priorities in Wales. The Statement highlighted the Welsh Government's commitment to develop a Water Strategy for Wales which will set out clear actions to deliver and manage water policy in Wales. This document will also identify where primary legislation will be required to deliver these policies. The Welsh Government intends to publish the Strategy for consultation this winter.
51. The consultation will explore a range of options to ensure that there is enough water available in the future for public supply and to maintain the environment in Wales. In addition, it will include a broader affordability framework for Wales which will go wider than social tariffs and will include actions to tackle bad debt and ensure effective referrals to benefits entitlement, finance and debt advice for water customers that are experiencing problems with their bills. If primary legislation is required, the Welsh Government will look at appropriate legislative mechanisms for delivering this.

18 <http://www.environment-agency.gov.uk/business/sectors/39687.aspx>

19 <http://new.wales.gov.uk/about/cabinet/cabinetstatements/2011/12decemberwaterpolicy/>

52. It is important to note that in May 2012, John Griffiths announced that a single body will be created to bring together the Forestry Commission Wales, Countryside Council for Wales and the Environment Agency Wales.
53. This new organisation will begin operating in April 2013. The new body will have a key role in protecting natural resources, working with businesses in Wales. It will also provide environmental advice and input to the planning processes and the development of new legislation, helping to design new regulatory arrangements which simplify regulatory processes and encourage investment whilst maintaining the environmental well-being of Wales. References to the Environment Agency in the draft Bill may therefore be changed in the Bill that is introduced into Parliament.

Taking the draft Bill forward

54. We will continue to refine our legislative proposals during the period of pre-legislative scrutiny. It is likely that a number of aspects of the draft Bill will change before the Bill is introduced into Parliament; there are also other measures which may be included in the final Bill which are not included at this stage:
 - The Welsh Ministers will take decisions on their future policy in regards the appropriate role of market reform and regulatory mechanisms in the Welsh Government's forthcoming consultation on its Water Strategy for Wales later this year.
 - In developing the draft Bill, the Welsh Government has requested the transfer of further executive functions to the Welsh Ministers and assurance that the current executive functions of the Welsh Ministers and how they are exercised are protected in this draft Water Bill. The UK Government has worked closely with the Welsh Government to try and agree the application of the provisions, however, further work is needed so as to reflect the policy of both administrations. The UK Government will continue to engage with the Welsh Government as the draft Bill is taken forward.
 - Some references to the Environment Agency in the draft Bill will need to be changed in the final Bill that is introduced into Parliament to reflect the new Natural Resources Body for Wales.
 - If requested by the Scottish Government, provisions in the final Bill to change Scots Law in order to facilitate a seamless cross-border retail market for water and sewerage.
 - The Government is also in discussion with the Scottish Government about the extension of the environmental permitting regime to the River Esk in Scotland in relation to fish passes. Currently, the Esk is largely regulated under the English regime (while the River Tweed is largely regulated by the Scots regime).
 - In the Water White Paper, the Government promised to consider the case for elevating Ofwat's current duty to promote sustainable development to primary status. The Welsh Government stated in its response to the Ofwat Review that this should be done. A final decision will be taken by the UK and Welsh Governments in advance of the Bill's introduction.
 - The Public Bodies Act contained a power to allow Drinking Water Inspectors to recover the costs of regulatory work from the water industry. The ability to amend these powers only lasts until 2017. A permanent solution may need to be sought through further primary legislation in the final Water Bill.
 - Government may seek to grant a power for the Drinking Water Inspectorate to enable it to increase the transparency of charges for inspections on private water supplies.

- Ofwat is required to handle, or consider handling, cases referred to it under a wide range of provisions of the Water Industry Act 1991 from large and complex Competition Act cases down to individual customer disputes. The Ofwat review recommended that the UK and Welsh Governments should favourably consider the request from Ofwat for discretion to choose the casework it takes on – once Ofwat and the Consumer Council for Water could ensure that all customer complaints could still be appropriately addressed. We will consider whether to include proposals on this in the Bill for introduction.
- The Government will consider the need to introduce a new statutory basis for the new Strategic Policy Statement to Ofwat.
- Finally, the UK and Welsh Governments may also need to consider legislation to help manage the financial risk of flooding.

SECTION 2 – THE PROPOSALS AND THEIR INTENDED EFFECTS

55. The explanatory notes in Section 5 of this document set out in detail the legislative effects of individual clauses. This section sets out the policy intentions behind the different parts of the draft Bill.

Water supply and sewerage licensing – *Clauses 1-6 and Schedules 1-5*

Current water supply market

56. The Water Act 2003 put in place a framework for a limited retail market for water, enabling very large water users to switch suppliers and new entrants to join the market. This regime is not working. Restricting the ability to switch to very large water users has left the competitive market too small to develop. Although around 2200 businesses were eligible to change supplier under the 2003 regime, only one business has.
57. To address this, as a first step, in December, the Government increased the size of the water supply licensing market by lowering the annual water consumption threshold at which customers in the areas of water undertakers based wholly or mainly in England can switch suppliers from 50 million litres to 5 million litres. This has brought around a further 24,000 eligible customers into the market. The Bill will abolish the threshold in England so that any business customer or public sector-body can choose its suppliers. The Bill will also create a sewerage licensing regime in England parallel to the water supply licensing regime. This will further incentivise customers to consider switching their suppliers as they will be able to tender for water and sewerage services at the same time and choose single or multiple suppliers.
58. The Welsh Government's current policy is for the licensed water supply threshold to be retained at 50 million litres a year for water companies that are wholly or mainly in Wales. The Welsh Government is monitoring the situation in England as result of the threshold reduction and is currently scoping options for Wales.

Unbundling the combined Water Supply Licence

59. Under the current licensing regime the only licence choice available to a new entrant that wants to provide upstream water supply services is a combined Water Supply Licence. This requires licensees to provide customers with both retail and upstream services. "Upstream" services in this context means supplying raw or treated water to customers by introducing water into the incumbent water company's supply system. "Retail" services includes some or all customer facing services, for example billing, meter reading and call centre services.
60. This Bill will unbundle the combined licence allowing the granting of a single water supply licence which may contain a number of separate authorisations which specify the services that the holder is entitled to provide. A new entrant wishing to provide upstream water supply services, such as inputting its own water resources into a water company's system will no longer be obliged to also provide retail services to customers. The change will enable all new entrants to provide services to each other and specialise in the services they wish to provide to customers.
61. Those new entrants with their own water resources will be able to concentrate their efforts on wholesale activities under a "wholesale authorisation" (that is the inputting of water into an undertaker's water supply system) and leave the provision of retail services to others better placed to provide them. To maximise the opportunities to provide efficient and innovative wholesale water supply, the Bill will extend new entrants' access rights to water companies' treatment and storage systems as well as their mains and pipes. This will allow alternative suppliers, such as landowners or farmers with spare water, to input water into any part of the network (for example directly into a reservoir).

62. The Bill will also introduce a “network infrastructure authorisation” to enable new entrants to own and operate their own infrastructure (mains, pipes, storage and treatment) which is connected to an incumbent²⁰ water company’s network and used to supply water in order to bypass parts of that network, before reintroducing the water for a later retail supply.
63. The Bill will introduce a new “retail infrastructure authorisation” which will enable the holder to provide the so called “last mile” infrastructure which will connect eligible premises to undertakers’ water supply systems (for example the licensee will own and manage the mains, pipes, meters etc. the undertaker would otherwise have provided for a new development). This will initially enable new entrants to provide such infrastructure to supply commercial and industrial sites in line with the other new authorisations, but the draft Bill includes a power for Ministers to enable those holding a retail infrastructure authorisation to own and operate retail infrastructure for household premises in order to completely replace the inset regime for unserved areas and large users.
64. The advantage of this for new entrants would be in their ability to offer services to developers under a national licence rather than having to extend their area of appointment on a site by site basis. The holder of a retail infrastructure authorisation would not be required to provide the retail services itself unless it wants to – instead it could make arrangements with another licensee or the local water company.
65. The Bill will retain an equivalent of the retail-only licence (the retail authorisation) currently provided for under the water supply licensing regime. As before, this will entitle the holder to provide customer facing services to eligible premises, which will include its own premises, those of its associates and customers and those of other licensees that do not want to provide retail services.

Sewerage licence authorisations

66. Sewerage licences will largely mirror water supply licences. Single or multiple authorisations may be granted under the sewerage licence. Again these will include a “retail authorisation”, a “retail infrastructure authorisation”, a “wholesale authorisation” and a “network infrastructure authorisation” to enable new entrants to provide a range of services to eligible premises in competition with incumbent sewerage undertakers.
67. In addition, a “disposal authorisation” like a “wholesale authorisation” will authorise a licensee to remove matter from the sewerage system of a sewerage undertaker. The treated or untreated matter may then be treated, disposed of, or otherwise used by the licence holder. However, the disposal authorisation is not linked to the provision of services to premises. This helps create a market for alternative sources of water (for instance the supply of recycled water for industrial or commercial use) and sewage sludge (for example for energy production, fertiliser manufacturing etc.).

Self-supply

68. Allowing licensees to provide services to their own premises or those of their associates using an undertaker’s system will mean that suitable customers can become their own supplier and buy water and sewerage services direct at wholesale prices and reduce the need to use a licensee as a middleman. A customer may also input its own water resources into an undertaker’s supply system in order to supply its own premises or those of its associates. A customer may also apply for a sewerage licence to treat and dispose of wastewater from those premises.

²⁰ For the purposes of this document an “incumbent” is a water and/or sewerage undertaker that holds the de facto monopoly to provide services to premises in its area of appointment. It does not include inset appointees even though these too become the undertaker for the area to which they are appointed.

Application process

69. While sewerage licenses will be separate to water supply licences, we envisage that applicants for authorisations under both licences will be able to make a single combined application for both licences.
70. The roles of the Environment Agency and the Drinking Water Inspectorate (DWI) will be strengthened to manage this new regime. The legislation will require Ofwat to consult the DWI before it grants a water supply licence with an upstream authorisation and when it is preparing codes to regulate arrangements between water undertakers and licensees. The Environment Agency has a similar role in relation to upstream sewerage licensees and market arrangements.
71. Water and sewerage undertakers that wish to enter the competitive market will have to set up a legally separate limited company and apply for a licence on the same basis as new entrants. However, if a water-only undertaker wishes to provide sewerage services it will be able to apply for a sewerage licence without having to set up a separate limited company (and a sewerage only undertaker would likewise be able to apply for a water supply licence).
72. The Bill will remove the need for retail licensees that are not associated with incumbent water companies to set up a separate ring-fenced limited company to qualify for a licence.

Accessing the market

73. Licensed water suppliers are currently required to enter the water supply market by agreement with existing undertakers in the areas in which they wish to operate (i.e. negotiated access). Negotiating access involves a lot of time, effort and cost for both new entrants and undertakers. A retailer wishing to operate in different water companies' supply areas must negotiate separately with each of them, with no guarantee that one successful negotiation will mean that other negotiations run smoothly.
74. This Bill will introduce more straightforward regulated access through the use of 'market codes' – an approach similar to that adopted in the energy sector and in the Scottish water market. Market codes will be developed by Ofwat in consultation with incumbent water companies, licensees, other regulators and the Consumer Council for Water.
75. The costs principle²¹ is the basis on which wholesale prices in the water supply licensing regime must currently be calculated. It has been widely criticised as giving little incentive to incumbent water companies to become more efficient. The Bill will therefore remove the costs principle from legislation. We will instead introduce a flexible wholesale access pricing regime that will allow efficient and fairer entry by new entrants.
76. Existing water companies will also benefit from the removal of the barriers to new entrants to the water supply market. They will have an increased flexibility to expand, widen and diversify their services, compete on a level playing field in other water companies' supply areas and offer bespoke services to customers. We have also included a provision in the Enterprise and Regulatory Reform Bill, currently before Parliament, to repeal the "in-area trading ban"²² which prevents a subsidiary of the incumbent water companies from trading in the area of its parent company. Removal of the ban will allow these licensees to compete on an equal footing with unassociated licensees for multi-site water supply contracts across England and Wales.

21 Section 66E of the Water Industry Act 1991

22 Section 2(3)(d)(iii) of the Water Industry Act 1991 and the associated standard licence conditions.

Household customers and competition

77. While this reform package focuses on competition in the business market in England, domestic customers may benefit as well. The Government believes that water companies will become more customer focused and develop new skills to compete in the new retail market. Offering a range of tariffs and service packages should become part of their core business.
78. The UK and Welsh Governments do not believe that there is a case in the foreseeable future for opening up the household market to competition. Household customers are unlikely to see the discounts from switching their water supplier that they might get from switching their energy or telecom supplier. This is because water is relatively cheap and the retail margin for household customers is small.
79. We want to avoid the potential for household customers to cross-subsidise attempts to attract business customers. While the costs principle currently plays a part in protecting household customers from this, its removal will not result in a breakdown of cross-subsidies and lead to higher prices for households as is sometimes alleged. Ofwat's charging rules (issued with regard to Ministerial guidance) will ensure that non-household customers continue to make an adequate contribution to the full costs of the undertaker's business, including its wider duties.

Application to Wales

80. The Welsh Government has agreed in principle that the costs principle should be removed and the Welsh market would be regulated through market codes and charging rules. The Bill will enable the Welsh Government to adopt the other reforms in the future, should it choose to do so, but for the moment it preserves the effect of the rest of the existing statutory provisions of the water supply licensing regime (for example, only customers that use fifty million litres of water a year may switch their supplier and an equivalent of the combined licence will remain).

Introducing a joint retail market with Scotland – *Clause 7*

81. In Scotland a market in retail services for business and public sector customers has existed since 2008. This regime has seen over 60 per cent of the market renegotiating the terms of their water supplies.
82. The Water White Paper set out the Government's commitment to establish a new cross-border market for retail water and sewerage services with Scotland. The Government wants to see the market develop so that water suppliers on both sides of the border can work with their business and public sector customers to manage their water and sewerage services in the same way that they manage other utilities, increasing choice, providing tailored services, increasing efficiency; and cutting costs.
83. As acknowledged above, ensuring that customers are able to reap the full benefits of these changes, will require a significant joint effort from the Governments, regulators and market participants in both England and Scotland. We have invited the Scottish Government, Water Industry Commission for Scotland (WICS), and participants in the Scottish retail market to be represented on the High Level Group for market reform.
84. The UK Government is working with the Scottish Government with the aim that water supply licensees and sewerage licensees will be able to seamlessly compete for customers across England and Scotland (and eligible water supply customers in Wales), and that customers will be able to contract with a single supplier for operations across most of the country.

85. We are investigating the possibility of applicants being able to choose which of the two independent economic regulators: Ofwat and the WICS to apply to for licences to offer retail water and sewerage services across England and Scotland (and where able, Wales). It would be beneficial if a fast track licensing procedure could be put in place with separate licences for the two regulators' jurisdictions being issued simultaneously following a single application to either regulator. It would also be beneficial if both regulators have a power to share information between them for enforcement purposes.
86. Achieving this would require, as well as the provisions currently in the Bill, equivalent changes in Scots Law. We are discussing with the Scottish Government whether and how this might be delivered.

Bulk Supplies and Main Connections – *Clauses 8-9*

87. A bulk supply arrangement is an agreement for a water undertaker to sell a wholesale supply of water to another undertaker. The Government wants to increase interconnection in the water supply system in England so that water resources can be used more flexibly and efficiently.
88. Enabling Ofwat to introduce a market code and charging rules to govern bulk supply arrangements between water undertakers (including insets) will compliment the regulator's other initiatives to help facilitate trades by introducing regulatory incentives to help make water trading more attractive and to develop a model contract for bulk supplies.
89. It will increase transparency and streamline negotiations around bulk supply and sewerage service arrangements for new building developments. This will be of particular value to developers of greenfield sites.
90. To support this, the Bill provides for Ofwat to publish rules about the charges entailed in these agreements following any guidance produced jointly by the Secretary of State and the Welsh Ministers.
91. In making an agreement companies must under this Bill follow any code issued by Ofwat. Ofwat will retain its current powers to intervene where the companies cannot reach an agreement and impose terms and conditions on them.
92. Main connection arrangements are arrangements for the provision of wholesale sewerage services to other undertakers (including inset appointments). The changes to the main connections provisions broadly mirror the changes to the bulk supply provisions. However, the consultees for codes for the bulk supply of water would also include the Drinking Water Inspectorate.

Changes to the inset regime – *Clauses 10-11*

93. Non-household customers in England with premises that use 50 million litres of water or more a year can replace their local water and sewerage company with an alternative supplier under the "inset" regime or "new appointments and variations" regime. These appointees under the "large user" criterion²³ can purchase a bulk supply or use their own resources. The inset regime also allows developers of greenfield sites to choose an alternative supplier to lay down water and sewerage infrastructure and to stay on as the local water company. These new entrant suppliers are appointed under the "unserved" criterion²⁴ and often provide the development with energy and telecoms infrastructure too.

23 Section 7(4)(bb) of the Water Industry Act 1991

24 Section 7(4)(b) of the Water Industry Act 1991

94. The Government believes that the interests of customers will be best served by the eventual replacement of the inset regime with an adapted licensing regime. The draft Bill contains a power for the Secretary of State to stop new inset appointments under the large user or unserved criteria for non-household premises, which we intend to commence after all the licensing reforms are in place. A licensee with a retail authorisation will be able to provide the same services to a wider range of premises without having to go through a burdensome appointment process on a site by site basis. However, the Government will only be able to remove access to the inset regime from appointees/undertakers that enter the market after commencement of the provisions. Incumbent water companies and inset appointees in place before commencement will be able to continue to serve existing customers and expand their business under the inset regime.
95. Meanwhile, the Government proposes that the Drinking Water Inspectorate and the Environment Agency should be added to those bodies to be notified when Ofwat is considering the suitability of appointing a company to be an inset appointee, in order that they can submit to Ofwat their views on the suitability of the applicant.

Changes to the special merger regime – *Clauses 12-13*

96. To increase flexibility for water companies to expand, the Bill will reform the special merger regime. In most sectors, companies are generally free to merge and acquire one another unless serious competition concerns arise. This can be a strong driver for improving the efficiency of companies, leading to improved service and lower costs that can be passed on to customers. The water sector is one of the few sectors that has a special merger regime, under which a merger proposal must be referred to the Competition Commission if the turnover of the acquired or acquiring water company meets or exceeds a threshold of £10 million per annum. This regime dis-incentivises mergers and reduces the scope for water companies to be taken over by more efficient competitors or gain from efficiencies of scale.
97. The Bill would introduce a two-tier referral system, allowing water companies seeking to take over another water company to make undertakings to the OFT to compensate for the loss of a comparator (such as continuing with separate reporting or separate price limits, or divesting parts of the business etc.) in lieu of an expensive referral to the Competition Commission. The OFT, in consultation with Ofwat, will instead of making an automatic referral, consider whether a merger is likely to result in the significant loss of one or more comparators (that is – will the loss of an independent water company impact on Ofwat's ability to make meaningful comparisons between water companies?). Ofwat will also be required to publish a statement of methods which will set out how it values comparators. This statement will help acquiring water companies to decide whether they would be in a position to offer undertakings to the OFT to compensate for the loss of a comparator before making a decision to pursue a merger.
98. The Water White Paper included a commitment to consult further with water companies and others to inform a decision on a higher £70 million threshold to exclude more mergers from automatic referral to the Competition Commission. Any resulting change to the threshold will be made through secondary legislation under existing powers. A new provision in the Water Industry Act 1991 will oblige the OFT to keep the threshold under review and provide advice to the Secretary of State accordingly.
99. The Enterprise and Regulatory Reform (ERR) Bill includes provisions to reform the wider merger regime under the Enterprise Act 2002. These include imposing time limits on when decisions should be made. The ERR Bill also includes provisions to merge the OFT and Competition Commission into a single Competition & Markets Authority. Both these bodies have roles under the special merger regime in water as well the wider merger regime. For the purposes of pre-legislative scrutiny we have retained the names of the existing bodies in the draft Bill and have not included the wider merger reforms taken forward in the ERR

Bill. Subject to the passing of the ERR Bill, the Government is minded to adopt the reforms to the wider regime in water legislation. This can be done through existing powers to adopt changes under the Enterprise Act 2002 or through the Water Bill depending on timing of Royal Assent of the ERR Bill and introduction of the Water Bill respectively.

100. The Welsh Government has stated that any changes to the special merger regime should ensure the best outcome for water customers in Wales. In addition the special merger proposal should not affect the powers of the Welsh Ministers.

Charges Schemes – Clause 14

101. Under the Water Industry Act 1991 water and sewerage companies cannot charge customers unless their charges schemes have been approved by Ofwat in advance. This is generally seen to be an overly burdensome and regulatory approach requiring significant concentration of resources each year.
102. The Bill would repeal this duty and replace it with a duty for Ofwat to produce rules which companies would be obliged to follow in setting their charges schemes. These rules would need to be written with regard to any guidance produced jointly by the Secretary of State and the Welsh Ministers.
103. Ofwat would be granted a power of direction for when it thinks a company is not acting in accordance with the rules. The direction might, for example, direct that schemes be replaced the following charging year or, if absolutely necessary, in year, or to take such other action as is appropriate – for example for the undertaker to conduct better research into its customer base.
104. The Consumer Council for Water will be a statutory consultee in producing both the rules and the guidance.

Connection charges – Clauses 15-17

105. Development is central to the Government's agenda for stimulating economic growth. Ensuring access to infrastructure to provide sustainable water and sewerage services is essential for developments to proceed. The Ofwat and Cave reviews identified problems with how developers are charged for connecting to water and sewerage infrastructure. The Bill would allow for the creation of a new transparent and flexible charging scheme.
106. Currently, where there is a duty on a water company to provide a connection, there is a corresponding right to charge for that connection and, sometimes, for additional works necessary to reinforce the existing supply or sewerage network. The Water Industry Act 1991 sets out detailed methodologies for how some of the charges should be worked out. The current charging provisions lack transparency, do not properly reflect the costs involved and as the detailed methodologies for calculating the charges are set within primary legislation, lack opportunity for change.
107. This legislation has been interpreted in different ways and companies do not charge on a consistent basis. This has led to disputes, generally between consumers/developers and undertakers, which have been referred to Ofwat to resolve. Considerable administrative burdens arise for developers, water companies and Ofwat in the preparation and assessment of casework associated with the determination of these disputed cases.
108. The Bill will reform the regime for "Connection Charges" by amending the legislation to allow for charging rules to be produced by Ofwat. Water and sewerage companies would be obliged to comply with Ofwat's rules in setting their charges. These rules would need to be written with regard to any guidance produced jointly by the Secretary of State and the Welsh Ministers.

109. The UK and Welsh Governments are working with Ofwat, water companies and developers to establish what the new charging regime should look like.

Changes to Ofwat's regulation of the industry – *Clauses 18-23*

The role of Ofwat

110. Ofwat (or The Water Services Regulation Authority) is the economic regulator of the water and sewerage industry in England and Wales. Its role is to make sure that the water companies provide household and business customers with a good quality service and value for money. It does this by monitoring performance and setting efficiency targets to ensure delivery of the best outcome for customers and the environment.
111. In 2010-11 David Gray led a review of Ofwat to assess whether the existing arrangements for economic regulation and consumer representation in the water sector were fit for purpose. The Review found that Ofwat needed to reduce the burden of regulation and compliance on water companies to allow them more flexibility and encourage them to be more innovative in their approach. It also made a number of recommendations for legislation which are being followed up with this Bill.
112. To ensure the effectiveness of the reforms being made to the Water Supply Licensing regime it is necessary to ensure that Ofwat has the regulatory tools to deliver the reformed water supply licensing regime and to ensure that the expanded water market and the sewerage market work well for consumers.

Powers to impose financial penalties

113. The water industry regulatory framework is currently built around five-yearly reviews of price controls. The information submitted at these price reviews is forward-looking, and determines the prices companies can charge for the following five years. To impose a financial penalty Ofwat must currently issue a formal notice regarding a penalty for certain contraventions by water companies of their statutory duties, appointment conditions and licence conditions, and any failures to achieve standards of performance within twelve months of the contravention or failure to achieve a standard occurring. We want to ensure that Ofwat can provide the appropriate incentives to discourage any breach which materially affects price limits, and therefore wish to extend the time limit from twelve months to five years. Ofwat would then be able to capture the full extent and scope of any contravention in any penalty that it imposes. This will place an added incentive on companies to comply with their obligations as well as offering greater protection for consumers.

Introducing a code of practice on mis-selling

114. We must ensure that the expansion of competitive markets does not create problems for non-household customers that decide to switch suppliers. Ofwat's proposals to set default tariffs for charges to non-household customers will help with this. The risk of mis-selling seems likely to be higher in the early stages of a newly competitive market and for certain customer groups (such as micro businesses).
115. The Bill will give Ofwat a power to apply to the Secretary of State to make statutory provision, for example by a statutory code of practice, to prevent mis-selling applicable to incumbent water undertakers and to water supply and sewerage licensees.
116. We intend that a code would require those operating in the non-household retail market to publish information to inform customers' choices about switching suppliers. The code is likely to address marketing activities such as doorstep selling, telesales, cold calling, and all forms of publicity and advertising. All parties operating in the water or sewerage retail market would be required to have regard to the code when dealing with customers. This would include agents, brokers, subcontractors or any other intermediaries.

Customer Service Standards – extending the power to make regulations

117. The Water Industry Act 1991 currently provides a mechanism for introducing minimum service standards and payments for service failures for household and non-household customers. Under these provisions, which are more commonly known as ‘guaranteed service standards’ (or ‘GSS’), Ofwat makes recommendations to Ministers for standards and payments which are then laid down in regulations.
118. This power did not originally extend to licensed water suppliers because it was envisaged that individual contractual arrangements between customers meeting the fifty million litre threshold requirement and licensed water suppliers would include terms on service failures and other service standards. However, this may not necessarily be the case once the threshold is removed (see above). Eligible customers are potentially going to be worse off if they are not offered the same minimum standards, and licensees will have a competitive advantage if they are not required to match those standards that incumbents are supposed to meet.
119. This Bill will create the power to make appropriate regulations applicable to all licensees operating in the retail market.

Extending Ofwat’s enforcement powers

120. The Bill will grant Ofwat and Ministers a power to gather information from water companies about compliance with the guaranteed standards of service mentioned above.
121. However, the ERR Bill includes provisions placing an explicit duty on Ofwat to consider whether a more appropriate way of proceeding would be under the Competition Act 1998 before using its powers under the Water Industry Act 1991. This will be important as competition evolves in the sector.

Modification of appointment and licence conditions

122. In common with earlier reforms, such as those in the Water Act 2003, Ofwat will be granted a time limited power to make only those changes to water company appointments and water supply licences as are necessary or expedient to deliver specific reforms introduced by the Bill following Royal Assent.

Water Resources Management – *Clauses 24-25*

Reducing the frequency of drought plans

123. The basic cycle for water resources management planning and drought planning in the Water Industry Act 1991 is five and three years respectively.
124. To reduce the administrative burden on water companies the Bill will amend the legislation to change the time limit for preparation of drought plans to every five years in line with that for water resource management planning. The Bill will also state that this is the time limit for finalised plans to be published. The Secretary of State will retain the discretionary power to compel companies to prepare drought plans more frequently if circumstances require it. There would therefore be no risk associated with this measure in terms of speed of response to droughts. The Bill also includes a power to enable the planning cycle of both drought plans and water resources plans to be amended by Order in future, for example if the Ofwat quinquennial review cycle changes.

Removal of requirement to keep and maintain a public register of maps

125. The Environment Agency is currently required to keep and maintain a public register of maps showing the pipes and waterworks it holds. This means that it must keep duplicate records of the publicly accessible portion of its records in a separate public register, as the relevant maps in the records are mixed with other documents which are not suitable for public access.
126. The Environment Agency has no evidence that it has ever been used by the public, can see no likelihood of it being needed in the future, and there is more recent over-riding legislation that creates legal obligations for the disclosure of information.
127. The Bill will therefore repeal this requirement.

Consolidation of environmental permitting – *Clauses 26-28 and Schedule 6*

128. The environmental permitting framework was established in 2008. It has brought together a number of previously disparate consenting regimes (which lay down rules concerning pollution control that operators have to abide by), covering for example large industrial installations, waste operations, mobile plant, radioactive substances activities, water discharge and groundwater activities. Rather than operators having to apply to regulators for a range of different consents, the environmental permitting regime allows operators to apply for one permit covering all these activities. It reduces costs while providing the same level of environmental protection.
129. The permitting regime as it stands does not extend to include abstraction and impounding licences, flood defence consents and fish pass approvals. Businesses requiring these permits currently have to make a number of varied and complex applications to cover these areas.
130. The UK and Welsh Governments will widen the scope of the current environmental permitting framework to include water abstraction and impounding licensing, flood defence consents and fish pass approvals. This will, for example, make applications for flood consents easier by removing duplication with other Environment Agency consent schemes (and potentially those by other regulators). This will streamline procedures and processes for business and regulators, further reducing costs in applying for and receiving permits.
131. We will include a regime similar to the fish passage regulatory regime contained in the Eels Regulations and relevant provisions of the Salmon and Freshwater Fisheries Act 1975 (which will be repealed) in the EPRs, allowing for the possibility of extending the regime so that it applies to all species of freshwater and migratory fish. This would, for example, require a newly constructed or altered dam to include a fish pass or that an existing fish pass is modified to be suitable for all species of migratory fish (Defra is currently looking at introducing further fish passage legislation for all fresh water fish to deliver its Water Framework Directive commitments).
132. For the purpose of fisheries management, the whole of the Border Esk has been regulated under an English regime since the 1860s. Broadly speaking the Environment Agency's licensing powers cover the Scottish Border Esk and its Scottish tributaries, whilst fisheries in the English River Tweed and its English tributaries are managed by Scotland. This arrangement has been part of an agreement to ensure that the Border Rivers could be managed on a catchment basis. We are working with the Scottish Government on how best to regulate cross-border rivers.

SECTION 3 – DEVOLUTION

133. The draft Bill extends to England and Wales only. We expect two aspects to extend to Scotland in the final Bill, but we will develop these further with Scottish Government colleagues during the pre-legislative scrutiny period.

Wales

134. Generally, water industry and environment law are devolved in relation to Wales. Broadly, the draft Bill does not extend the new licensing regime in the areas of water undertakers wholly or mainly in Wales. The new wholesale arrangements (market codes and access prices), the new inset regime, and environmental measures (including extending Environmental Permitting) apply across the whole of England and Wales. The UK Government has worked closely with the Welsh Government to try and agree the application of the provisions, however further work is needed so as to reflect the policy of both administrations. The UK Government will continue to engage with the Welsh Government as the draft Bill is taken forward.

135. The National Assembly for Wales has legislative competence for a range of water and flood defence matters and as such a Legislative Consent Motion will be required in the National Assembly for Wales when the Bill is finally introduced.

136. The Welsh Government is currently working up proposals to simplify arrangements for managing the environment in Wales. The Natural Resources Body for Wales aims to bring together the functions of the Countryside Council for Wales, the Forestry Commission in Wales and the functions of the Environment Agency in Wales. The new body will have a key role in protecting natural resources, working with businesses in Wales. It will also provide environmental advice and input to the planning processes and the development of new legislation, helping to design new regulatory arrangements which simplify regulatory processes and encourage investment whilst maintaining the environmental well being of Wales. References to the Environment Agency in the draft Bill may therefore be changed in the Bill that is introduced into Parliament.

Scotland

137. Water industry and environment law are wholly devolved in relation to Scotland. There are separate bodies in Scotland that carry out equivalent functions to Ofwat – the Water Industry Commission for Scotland (WICS) – the Environment Agency – the Scottish Environment Protection Agency – and the Drinking Water Inspectorate – the Drinking Water Quality Regulator for Scotland.

138. We aim to establish a seamless cross-border market in water and sewerage retail services. We are investigating the possibility that water and sewerage retailers could apply for licences under both regimes using only one regulator (either WICS or Ofwat) as a single point of contact. This will make applications easier enabling them to operate either side of the border. We have invited the Scottish Government to consider whether changes should be made in Scots law.

139. The draft clauses on environmental regulation do not extend beyond England and Wales. However, we are considering with the Scottish Government about their eventual extension to the River Esk in Scotland in relation to fish passes. Currently, the Esk is largely regulated under the English regime and the River Tweed is largely regulated by the Scots regime. We envisage that the same arrangement will be provided for in the clauses at introduction.

SECTION 4 – DRAFT WATER BILL

Water Bill

CONTENTS

PART 1

WATER INDUSTRY

Expansion of water supply licensing

- 1 Types of water supply licence and arrangements with water undertakers
- 2 The supply system of a water undertaker
- 3 The threshold requirement

Introduction of sewerage licences

- 4 Types of sewerage licence and arrangements with sewerage undertakers

Application as regards Wales

- 5 Water supply and sewerage licensing changes applied as regards Wales

Water supply licences and sewerage licences: household premises

- 6 Household premises served by a licensee's retail infrastructure

Licensing arrangements between England and Wales and Scotland

- 7 Arrangements with the Water Industry Commission for Scotland

Arrangements between relevant undertakers

- 8 Bulk supply of water
- 9 Main connections into sewerage systems

Inset appointments

- 10 Restriction on appointment in unserved area and large user cases
- 11 Procedure with respect to inset appointments

Duty of OFT to refer mergers of relevant undertakers to Competition Commission

- 12 Exceptions to duty and undertakings in lieu of merger references
- 13 Exclusion of small mergers: advice of OFT on threshold

Relevant undertakers' charges

- 14 Charges schemes
- 15 Charging rules
- 16 Charges for providing a water main etc
- 17 Charges for providing a public sewer etc

Regulation of relevant undertakers, water supply licensees and sewerage licensees

- 18 Extension of time limit for imposing financial penalties
- 19 Conduct of marketing activities
- 20 Standards of performance: water supply licensees
- 21 Standards of performance: sewerage licensees
- 22 Obtaining information for enforcement purposes
- 23 Modification of appointment and licence conditions

PART 2

WATER RESOURCES

- 24 Frequency of water resources management and drought plans
- 25 Maps of waterworks

PART 3

ENVIRONMENTAL REGULATION

- 26 Regulation of the water environment
- 27 Environmental regulation: procedure
- 28 Repeal of certain provisions about culverts

PART 4

GENERAL AND FINAL

- 29 Minor and consequential amendments
- 30 Power to provide for consequential amendments etc
- 31 Transitional, transitory or saving provision
- 32 Extent
- 33 Commencement
- 34 Short title

-
- Schedule 1 – Water supply licences: authorisations
 - Schedule 2 – Water undertakers' duties as regards water supply licensees
 - Schedule 3 – Sewerage licences: authorisations
 - Schedule 4 – Sewerage undertakers' duties as regards sewerage licensees

- Schedule 5 – Extension of licensing provisions in relation to Wales
- Schedule 6 – Regulation of the water environment
 - Part 1 – Purposes for which provision may be made
 - Part 2 – Supplementary provision
- Schedule 7 – Minor and consequential amendments

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Make provision about the water industry, the management of water resources and the regulation of the water environment.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

WATER INDUSTRY

Expansion of water supply licensing

1 Types of water supply licence and arrangements with water undertakers

- (1) For section 17A of the Water Industry Act 1991 there is substituted— 5
- “17A Water supply licences**
- (1) A person may be granted a licence in respect of the use of the supply system of a water undertaker (a “water supply licence”).
- (2) A water supply licence may give the holder of the licence one or more of the following authorisations and combination of authorisations— 10
- (a) a retail authorisation;
 - (b) a wholesale authorisation;
 - (c) a retail infrastructure authorisation;
 - (d) a network infrastructure authorisation;
 - (e) a restricted retail authorisation; 15
 - (f) a restricted retail authorisation and a supplementary authorisation.
- (3) Schedule 2A makes provision as to the authorisations (including their operation in England and Wales).

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- (4) In the case of each of the authorisations, an authorisation to do a thing is an authorisation to do it in accordance with Chapter 2A of Part 3.
- (5) A water supply licence may be granted by –
- (a) the Secretary of State, or
 - (b) the Authority. 5
- (6) The Authority may exercise the power to grant a water supply licence only –
- (a) with the consent of the Secretary of State, or
 - (b) in accordance with a general authorisation given by the Secretary of State. 10
- (7) Before giving consent or a general authorisation as regards the Authority, the Secretary of State must consult the Welsh Ministers.
- (8) References in this Act to a water supply licensee are references to a person that is the holder for the time being of a water supply licence.
- 17AA Water supply licences: restrictions on grants 15**
- (1) Before the Authority grants a water supply licence giving a wholesale authorisation, a supplementary authorisation, a retail infrastructure authorisation or a network infrastructure authorisation, it must consult –
- (a) the Secretary of State; 20
 - (b) the Chief Inspector of Drinking Water.
- (2) Before the Secretary of State grants a water supply licence giving a restricted retail authorisation (or a restricted retail authorisation and a supplementary authorisation), the Secretary of State must consult –
- (a) the Welsh Ministers; 25
 - (b) the Chief Inspector of Drinking Water for Wales if there is one.
- (3) Before the Authority grants a water supply licence giving a restricted retail authorisation (or a restricted retail authorisation and a supplementary authorisation), it must consult –
- (a) the Secretary of State; 30
 - (b) the Chief Inspector of Drinking Water;
 - (c) the Welsh Ministers;
 - (d) the Chief Inspector of Drinking Water for Wales if there is one.
- (4) A water supply licence may not be granted to a water undertaker.
- (5) A water supply licence may not be granted to a person unless that person is a limited company. 35
- (6) The restriction in subsection (5) does not apply if the water supply licence gives only –
- (a) a retail authorisation,
 - (b) a restricted retail authorisation, or
 - (c) a retail authorisation and a restricted retail authorisation.” 40
- (2) After Schedule 2 to the Water Industry Act 1991, there is inserted the Schedule set out in Schedule 1.

- (3) Schedule 2 (which amends Chapter 2A of Part 3 of the Water Industry Act 1991 which relates to water undertakers’ duties to enable operations of water supply licensees) has effect.

2 The supply system of a water undertaker

- (1) Section 17B of the Water Industry Act 1991 (guidance and interpretation) is amended as follows. 5
- (2) After subsection (4) there is inserted –
- “(4A) In this Chapter, references to the supply system of a water undertaker are, in the case of an undertaker whose area is wholly or mainly in England, references to the system comprising the following – 10
- (a) any reservoirs and other places of storage and any treatment works developed or maintained by the water undertaker for the purpose of complying with its duty under section 37, and
- (b) any water mains and other pipes which it is the water undertaker’s duty to develop and maintain by virtue of section 37.” 15
- (3) In subsection (5) (interpretation of references to the supply system of a water undertaker), after “undertaker are” there is inserted “, in the case of an undertaker whose area is wholly or mainly in Wales,”.

3 The threshold requirement

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- (1) The Minister may by order made by statutory instrument repeal –
- (a) section 17A(3)(b) of the Water Industry Act 1991 (the threshold requirement relating to water undertakers in England and Wales), or
- (b) paragraph 9(b) of Schedule 2A to the Water Industry Act 1991 (the substituted threshold requirement relating to water undertakers whose areas are wholly or mainly in Wales, set out in Schedule 1 to this Act), 25
- and make such amendments of the Water Industry Act 1991 and this Act as are necessary or appropriate in consequence of that repeal.
- (2) The power in subsection (1) may be exercised so as to repeal section 17A(3)(b) in relation to – 30
- (a) water undertakers whose areas are wholly or mainly in England,
- (b) water undertakers whose areas are wholly or mainly in Wales, or
- (c) water undertakers in England and Wales,
- and the power to make amendments that are necessary or appropriate in consequence of that repeal may be exercised accordingly. 35
- (3) “The Minister” means –
- (a) the Secretary of State, in relation to –
- (i) water undertakers whose areas are wholly or mainly in England, and
- (ii) such areas in England as are within the area of a water undertaker whose area is wholly or mainly in Wales; 40
- (b) the Welsh Ministers, in relation to such areas in Wales as are within the area of a water undertaker whose area is wholly or mainly in Wales.

- (4) A statutory instrument containing an order to be made by the Secretary of State under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of both Houses of Parliament.
- (5) A statutory instrument containing an order to be made by the Welsh Ministers under subsection (1) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales. 5

Introduction of sewerage licences

4 Types of sewerage licence and arrangements with sewerage undertakers

- (1) After section 17B of the Water Industry Act 1991 there is inserted –
- “17BA Sewerage licences 10**
- (1) A person may be granted a licence in respect of the use of the sewerage system of a sewerage undertaker whose area is wholly or mainly in England (a “sewerage licence”).
- (2) A sewerage licence may give the holder of the licence one or more of the following – 15
- (a) a retail authorisation;
- (b) a wholesale authorisation;
- (c) a retail infrastructure authorisation;
- (d) a network infrastructure authorisation;
- (e) a disposal authorisation. 20
- (3) Schedule 2B makes provision as to the authorisations.
- (4) In the case of each of the authorisations, an authorisation to do a thing is an authorisation to do it in accordance with Chapter 2A of Part 4.
- (5) A sewerage licence may be granted by – 25
- (a) the Secretary of State, or
- (b) the Authority.
- (6) The Authority may exercise the power to grant a sewerage licence only – 30
- (a) with the consent of the Secretary of State, or
- (b) in accordance with a general authorisation given by the Secretary of State.
- (7) References in this Act to a sewerage licensee are references to a person that is the holder for the time being of a sewerage licence.
- (8) References in this Chapter to the sewerage system of a sewerage undertaker are references to the system comprising – 35
- (a) the system of public sewers, the facilities for emptying public sewers and the sewage disposal works and other facilities for dealing effectually with the contents of public sewers that the undertaker is required to provide by section 94, and
- (b) the lateral drains that the undertaker is required to maintain by section 94. 40

17BB Sewerage licences: restrictions on grants

- (1) The Authority must consult the Secretary of State and the Environment Agency before granting a licence that gives –
 - (a) a wholesale authorisation,
 - (b) a retail infrastructure authorisation, 5
 - (c) a network infrastructure authorisation, or
 - (d) a disposal authorisation.
- (2) A sewerage licence may not be granted to a sewerage undertaker.
- (3) A sewerage licence may not be granted to a person unless that person is a limited company. 10
- (4) The restriction in subsection (3) does not apply if the sewerage licence gives only a retail authorisation.”
- (2) After Schedule 2A to the Water Industry Act 1991 (inserted by section 1), there is inserted the Schedule set out in Schedule 3.
- (3) Schedule 4 (which amends Part 4 of the Water Industry Act 1991 to add a Chapter 2A relating to arrangements between sewerage undertakers and sewerage licensees) has effect. 15

Application as regards Wales

5 Water supply and sewerage licensing changes applied as regards Wales

- (1) Schedule 5 (which contains amendments in connection with applying licensing changes to relevant undertakers whose areas are wholly or mainly in Wales) has effect. 20
- (2) Subsection (1) and Schedule 5 come into force on such day as the Minister may by order made by statutory instrument appoint.
- (3) “The Minister” means – 25
 - (a) in relation to areas in England, the Secretary of State;
 - (b) in relation to areas in Wales, the Welsh Ministers.
- (4) A statutory instrument containing an order to be made by the Welsh Ministers under subsection (2) may not be made unless a draft has been laid before and approved by a resolution of the National Assembly for Wales. 30

Water supply licences and sewerage licences: household premises

6 Household premises served by a licensee’s retail infrastructure

- (1) In Schedule 2A to the Water Industry Act 1991 (as set out in Schedule 1) –
 - (a) paragraph 4 (effect of retail authorisation granted by a water supply licence: exclusion of household premises), is renumbered as sub-paragraph (1) of that paragraph; 35
 - (b) after that sub-paragraph there is inserted –
 - “(2) The prohibition in sub-paragraph (1) does not apply if water supplied to particular household premises is conveyed to

- those premises by means of retail infrastructure and in accordance with a retail infrastructure authorisation.”
- (2) In Schedule 2B to that Act (as set out in Schedule 3)–
- (a) paragraph 2 (effect of retail authorisation granted by a sewerage licence: exclusion of household premises), is renumbered as sub-paragraph (1) of that paragraph; 5
- (b) after that sub-paragraph there is inserted –
- “(2) The prohibition in sub-paragraph (1) does not apply if matter discharged from particular household premises is conveyed away from those premises by means of retail infrastructure and in accordance with a retail infrastructure authorisation.” 10
- (3) Subsections (1) and (2) come into force on such day as the Minister may by order made by statutory instrument appoint, and different days may be appointed for different purposes.
- (4) “The Minister” means – 15
- (a) the Secretary of State, in relation to –
- (i) relevant undertakers whose areas are wholly or mainly in England, and
- (ii) such areas in England as are within the area of a relevant undertaker whose area is wholly or mainly in Wales; 20
- (b) the Welsh Ministers, in relation to such areas in Wales as are within the area of a relevant undertaker whose area is wholly or mainly in Wales.
- (5) The Secretary of State may by order make such provision as the Secretary of State considers appropriate in consequence of the coming into force of subsection (1) or (2). 25
- (6) The provision that may be made by virtue of subsection (5) includes, in particular, provision as to the interests of persons who have a home in household premises.
- (7) The power conferred by subsection (5) includes power – 30
- (a) to make transitional, transitory or saving provision;
- (b) to amend, repeal, revoke or otherwise modify any provision made by or under an enactment (including any enactment passed or made in the same Session as this Act).
- (8) A statutory instrument containing an order to be made by the Welsh Ministers under subsection (3) may not be made unless a draft has been laid before and approved by a resolution of the National Assembly for Wales. 35
- (9) A statutory instrument containing an order to be made by the Secretary of State under subsection (5) may not be made unless a draft has been laid before and approved by a resolution of both Houses of Parliament.
- (10) In this section “enactment” includes a Measure or Act of the National Assembly for Wales. 40

Licensing arrangements between England and Wales and Scotland

7 Arrangements with the Water Industry Commission for Scotland

- (1) Section 17F of the Water Industry Act 1991 (procedure for granting licences) is amended as follows.
- (2) After subsection (1) (form and manner of application to be prescribed) there is inserted – 5
- “(1A) Regulations under subsection (1) may in particular –
- (a) provide for an application for the grant of a water services licence under section 6 of the Water Services etc. (Scotland) Act 2005 to be treated as being also an application under subsection (1) for the grant of a water supply licence giving only a retail authorisation or a restricted retail authorisation or both; 10
- (b) provide for an application for the grant of a sewerage services licence under section 6 of the Water Services etc. (Scotland) Act 2005 to be treated as being also an application under subsection (1) for the grant of a sewerage licence giving only a retail authorisation; 15
- (c) provide for such an application to be forwarded to the Secretary of State or the Authority by the Water Industry Commission for Scotland.” 20
- (3) After subsection (4) (notice of intended refusal) there is inserted –
- “(4A) Where an application is forwarded by the Water Industry Commission for Scotland, the requirement in subsection (4) to give a notice to the applicant may be discharged by giving the notice to the Commission.”
- (4) After section 17R of the Water Industry Act 1991 there is inserted – 25

“Co-operation with the Water Industry Commission for Scotland

17S Co-operation with the Water Industry Commission for Scotland

- (1) Subsection (2) applies where a person makes –
- (a) an application under section 6 of the Water Services etc. (Scotland) Act 2005 for the grant of a water services licence, or 30
- (b) an application under section 6 of the Water Services etc. (Scotland) Act 2005 for the grant of a sewerage services licence, and the application is forwarded by the Water Industry Commission for Scotland to the Secretary of State or the Authority, as being also an application under section 17F(1). 35
- (2) If when making the application the person requests that the licences be granted so as to come into force at the same time, the Secretary of State or the Authority must have regard to that request in dealing with the application so forwarded.
- (3) The Authority may give assistance to the Water Industry Commission for Scotland in connection with – 40
- (a) the granting by the Commission of water services licences and sewerage services licences under section 6 of the Water Services etc. (Scotland) Act 2005;

- (b) the carrying out by the Commission of its regulatory functions as regards persons granted such licences.”

Arrangements between relevant undertakers

8 Bulk supply of water

- (1) For sections 40 and 40A of the Water Industry Act 1991 (agreements for the bulk supply of water etc) there is substituted – 5
- “40 Bulk supplies**
- (1) This section applies where –
- (a) a qualifying person requests a water undertaker (“the supplier”) to provide a supply of water in bulk to the qualifying person, or 10
- (b) the supplier proposes such an arrangement.
- (2) In this section “qualifying person” means –
- (a) a water undertaker;
- (b) a person who has made an application for an appointment or variation under section 8 which has not been determined. 15
- (3) On the application of the qualifying person or the supplier, the Authority may –
- (a) if it appears to the Authority that it is necessary or expedient for the purposes of securing the efficient use of water resources, or the efficient supply of water, that the supplier should give a supply of water in bulk to the qualifying person, and 20
- (b) if the Authority is satisfied that the supplier and qualifying person cannot reach agreement,
- by order require the supplier to give and the qualifying person to take a supply of water in bulk for such period and on such terms and conditions as may be specified in the order. 25
- (4) Subject to subsection (5), an order under subsection (3) has effect as an agreement between the supplier and the qualifying person.
- (5) If the Authority makes an order under subsection (3) that affects a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until – 30
- (a) the person becomes a water undertaker for the area specified in the order, or
- (b) the person becomes a water undertaker for an area that includes the area specified in the order (in the case of a water undertaker applying for a variation). 35
- (6) Neither the OFT nor the Authority may exercise, in respect of an agreement for the supply of water in bulk by a water undertaker to a qualifying person, the powers conferred by – 40
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
- (b) section 35(2) of that Act (interim directions).

- (7) Subsection (6)(b) does not apply to the exercise of powers in respect of conduct –
- (a) which is connected with an agreement for the supply of water in bulk by a water undertaker to a qualifying person, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act. 5
- (8) In exercising its functions under this section, the Authority must have regard to the desirability of – 10
- (a) facilitating effective competition within the water supply industry;
 - (b) the supplier’s recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital; 15
 - (c) the supplier’s being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water. 20

40A Variation and termination of bulk supply agreements

- (1) On the application of any party to a bulk supply agreement, the Authority may –
- (a) if it appears to the Authority that it is necessary or expedient for the purpose of securing the efficient use of water resources, or the efficient supply of water, that the bulk supply agreement should be varied or terminated, and 25
 - (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement,
- by order vary or terminate the bulk supply agreement. 30
- (2) If an order under subsection (1) is made in relation to a bulk supply agreement, the agreement –
- (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect (as the case may be).
- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party. 35
- (4) Neither the OFT nor the Authority may exercise, in respect of an agreement to vary or terminate a bulk supply agreement, the powers conferred by –
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements); 40
 - (b) section 35(2) of that Act (interim directions).
- (5) Subsection (4)(b) does not apply to the exercise of powers in respect of conduct –
- (a) which is connected with an agreement to vary or terminate a bulk supply agreement, and 45
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act

- relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (6) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the supplier in complying with its obligations under the bulk supply agreement in question and to the desirability of— 5
- (a) facilitating effective competition within the water supply industry;
 - (b) the supplier’s recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital; 10
 - (c) the supplier’s being able to meet its existing obligations, and likely future obligations, to supply water without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the supplier to meet its existing obligations, or likely future obligations, to supply water. 15
- (7) In this section and sections 40B to 40F—
- “bulk supply agreement” means an agreement with one or more water undertakers for the supply of water in bulk and includes— 20
- (a) an order under section 40 which is deemed to be an agreement by virtue of section 40(4), and
 - (b) any agreement which has been varied by order under subsection (1);
- “qualifying person” has the meaning given by section 40; 25
- “supplier”, in relation to a bulk supply agreement, means any water undertaker which is required by the agreement to provide a bulk supply of water.
- 40B Codes relating to the supply of water in bulk**
- (1) The Authority may issue one or more codes in respect of bulk supply agreements. 30
- (2) A code may set out—
- (a) a procedure for negotiating a bulk supply agreement;
 - (b) a procedure for negotiating an agreement to vary or terminate a bulk supply agreement. 35
- (3) A code may in particular specify—
- (a) terms and conditions to be incorporated into a bulk supply agreement, including terms as to the duration of such an agreement;
 - (b) principles for determining the terms and conditions that should or should not be incorporated into a bulk supply agreement. 40
- (4) A code may set out a procedure to be followed by the Authority in determining whether to make an order under section 40(3) or 40A(1), and such procedure may, in particular, require the Authority to consult the Environment Agency. 45
- (5) A code may set out the steps to be taken by the Authority in determining what constitutes compliance with a code.

- (6) If the Authority considers that a water undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) It is the duty of a water undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18. 5
- (8) The Authority may issue codes that apply –
 - (a) generally,
 - (b) to a specified person, or
 - (c) to persons of a specified description. 10

40C Codes: procedure

- (1) The Authority must prepare a draft of any code under section 40B.
- (2) If the draft code relates to bulk supply agreements for the supply of water in bulk by or to a water undertaker whose area is wholly or mainly in England, the Authority must consult the following about it – 15
 - (a) the Secretary of State;
 - (b) the Chief Inspector of Drinking Water;
 - (c) the Environment Agency;
 - (d) the Council;
 - (e) any water undertakers likely to be affected by the code; 20
 - (f) such other persons as the Authority thinks appropriate.
- (3) If the draft code relates to bulk supply agreements for the supply of water in bulk by or to a water undertaker whose area is wholly or mainly in Wales, the Authority must consult the following about it – 25
 - (a) the Welsh Ministers;
 - (b) the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies;
 - (c) the Environment Agency;
 - (d) the Council; 30
 - (e) any water undertakers likely to be affected by the code;
 - (f) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the draft code.
- (5) Before a code prepared by the Authority is issued, the Secretary of State may direct the Authority – 35
 - (a) not to issue the code, or
 - (b) to issue the code with specified modifications.The Secretary of State may not give a direction in relation to a code if or to the extent that the Welsh Ministers may give a direction in relation to the code under subsection (6). 40
- (6) Before a code prepared by the Authority is issued, the Welsh Ministers may direct the Authority –
 - (a) not to issue the code, or
 - (b) to issue the code with specified modifications. 45

- The Welsh Ministers may give a direction only in relation to a code that relates only to, or in relation to so much of a code as relates to, bulk supply agreements under which any supply of water is or would be a supply by a water undertaker whose area is wholly or mainly in Wales to another such water undertaker. 5
- (7) A direction under subsection (5) or (6) must be given within the period of 28 days beginning with the day after the end of the consultation period.
- 40D Codes: revision**
- (1) The Authority may revise a code issued under section 40B. 10
- (2) Sections 40B and 40C apply to a revision as they apply to an original code.
- (3) A revised code may include provision for applying any of its revisions to bulk supply agreements made before the revised code comes into effect. 15
- 40E Charging rules for the supply of water in bulk**
- (1) The Authority may issue rules about charges that may be imposed by a water undertaker under a bulk supply agreement.
- (2) The rules may in particular specify – 20
- (a) what types of charge may be imposed;
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed; 25
 - (d) principles for determining the amount of any charge that may be imposed.
- (3) The Secretary of State and the Welsh Ministers acting jointly may issue guidance as to the content of rules under this section.
- (4) The Secretary of State and the Welsh Ministers must – 30
- (a) prepare a draft of any proposed guidance and consult the Authority and the relevant persons about the draft;
 - (b) lay a copy of the guidance before both Houses of Parliament and the Assembly;
 - (c) publish the guidance. 35
- (5) The Authority must have regard to the guidance in making rules under this section.
- (6) The Authority must prepare a draft of any proposed rules and consult the Secretary of State, the Welsh Ministers and the relevant persons about the draft. 40
- (7) The relevant persons are –
- (a) the Council;
 - (b) any water undertakers likely to be affected by the guidance or (as the case may be) the rules;

- (c) such other persons as the person or persons consulting thinks or think appropriate.
 - (8) The rules may make provision which applies –
 - (a) generally,
 - (b) to a specified undertaker, or
 - (c) to undertakers of a specified description.
 - (9) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
 - (10) It is the duty of a water undertaker to comply with a direction under subsection (9), and this duty is enforceable by the Authority under section 18.
 - (11) The Authority may revise rules under this section.
 - (12) This section applies to a revision as to it applies to the original rules made under this section.
 - (13) Revised rules may include provision for applying any of the revisions to bulk supply agreements made before the revised rules come into effect.
- 40F Reduction of charges in particular cases**
- (1) A person who is party to a bulk supply agreement, or who is proposing to enter an agreement that would if made be a bulk supply agreement, may apply to the Authority for rules under section 40E to be varied so as to enable a reduction in charges payable for a supply of water under the agreement or proposed agreement.
 - (2) The Authority may grant the application if it is satisfied that –
 - (a) a reduction in the charges that would otherwise apply is justified by steps to reduce or manage water consumption that are taken or proposed to be taken by a person (who need not be a party to the agreement in question) in respect of relevant premises, and
 - (b) it is otherwise reasonable to reduce charges imposed in the particular case.
 - (3) Relevant premises are premises that are or would be supplied by the water to which the agreement or proposed agreement relates.
 - (4) If the Authority grants the application, it must specify how rules under section 40E are to be varied.
 - (5) The Authority may make the effect of some or all of the variations subject to compliance with conditions.
 - (6) The conditions may be directed to any party to the agreement or proposed agreement.
 - (7) The conditions may in particular be designed so as to secure a reduction in the charges payable by a person whose steps or proposed steps are relied on to satisfy the requirement in subsection (2)(a).

- (8) The Secretary of State and the Welsh Ministers acting jointly may issue guidance about varying rules under this section.
- (9) The Secretary of State and the Welsh Ministers must –
- (a) prepare a draft of any proposed guidance and consult the Authority and the relevant persons about the draft; 5
 - (b) lay a copy of the guidance before both Houses of Parliament and the Assembly;
 - (c) publish the guidance.
- (10) The relevant persons are –
- (a) any water undertakers likely to be affected by the guidance; 10
 - (b) such other persons as the Secretary of State thinks or the Welsh Ministers think appropriate.
- (11) The Authority must have regard to the guidance in exercising its functions under this section.”
- (2) In sections 40A to 40F of the Water Industry Act 1991 (as substituted by subsection (1)) – 15
- (a) a reference to a bulk supply agreement includes a reference to an old bulk supply agreement, and
 - (b) a reference to a supplier, in relation to a bulk supply agreement, is to be construed accordingly. 20
- For these purposes, an old bulk supply agreement is a bulk supply agreement within the meaning of section 40A, as that section had effect before being substituted under subsection (1).

9 Main connections into sewerage systems

- (1) For section 110A of the Water Industry Act 1991 (new connections with public sewers) there is substituted – 25
- “110A Main connections**
- (1) This section applies where –
- (a) a qualifying person requests a sewerage undertaker (“the established undertaker”) to permit a main connection into the established undertaker’s sewerage system, or 30
 - (b) the established undertaker proposes such an arrangement.
- (2) In this section “qualifying person” means –
- (a) a sewerage undertaker, or
 - (b) a person who has made an application for an appointment or variation under section 8 which has not been determined. 35
- (3) On the application of the qualifying person or the established undertaker, the Authority may –
- (a) if it appears to the Authority that it is necessary or expedient for the purposes of this Part that the established undertaker should permit a main connection into its sewerage system, and 40
 - (b) if the Authority is satisfied that the established undertaker and qualifying person cannot reach agreement,

- by order require the established undertaker to permit the connection for such period and on such terms and conditions as may be specified in the order.
- (4) Subject to subsection (5), an order under subsection (3) has effect as an agreement between the established undertaker and the qualifying person. 5
- (5) If the Authority makes an order under subsection (3) on the application of a person who is a qualifying person by virtue of subsection (2)(b), the Authority must frame the order so that it does not have effect until – 10
- (a) the person becomes a sewerage undertaker for the area specified in the order, or
 - (b) the person becomes a sewerage undertaker for an area that includes the area specified in the order (in the case of a sewerage undertaker applying for a variation).
- (6) Neither the OFT nor the Authority may exercise, in respect of an agreement with a sewerage undertaker for it to permit a main connection into its sewerage system for the benefit of a qualifying person, the powers conferred by – 15
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements); 20
 - (b) section 35(2) of that Act (interim directions).
- (7) Subsection (6)(b) does not apply to the exercise of powers in respect of conduct – 25
- (a) which is connected with such agreement as is mentioned in subsection (6), and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act.
- (8) In exercising its functions under this section, the Authority must have regard to the desirability of – 30
- (a) facilitating effective competition within the sewerage services industry;
 - (b) the established undertaker’s recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital; 35
 - (c) the established undertaker’s being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works; 40
 - (d) not putting at risk the ability of the established undertaker to meet its existing obligations, or likely future obligations, to provide such services.
- (9) In this section and sections 110B to 110F, a “main connection” means a connection – 45
- (a) between a sewer or disposal main and a sewer or disposal main, or
 - (b) a connection which allows a sewer or disposal main to discharge directly into a sewage disposal works.

110B Variation and termination of main connection agreements

- (1) On the application of any party to a main connection agreement, the Authority may –
- (a) if it appears to the Authority that it is necessary or expedient for the purpose of this Part that the main connection agreement should be varied or terminated, and
 - (b) if the Authority is satisfied that variation or termination cannot be achieved by agreement,
- by order vary or terminate the main connection agreement. 5
- (2) If an order under subsection (1) is made in relation to a main connection agreement, the agreement – 10
- (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect (as the case may be).
- (3) An order under subsection (1) may require any party to the agreement to pay compensation to any other party. 15
- (4) Neither the OFT nor the Authority may exercise, in respect of an agreement to vary or terminate a main connection agreement, the powers conferred by –
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements);
 - (b) section 35(2) of that Act (interim directions). 20
- (5) Subsection (4)(b) does not apply to the exercise of powers in respect of conduct –
- (a) which is connected with an agreement to vary or terminate a main connection agreement, and
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act. 25
- (6) In exercising its functions under this section, the Authority must have regard to the expenses incurred by the established undertaker in complying with its obligations under the main connection agreement in question and to the desirability of –
- (a) facilitating effective competition within the sewerage services industry;
 - (b) the established undertaker’s recovering the expenses of complying with its obligations by virtue of this section and securing a reasonable return on its capital;
 - (c) the established undertaker’s being able to meet its existing obligations, and likely future obligations, to provide sewerage services without having to incur unreasonable expenditure in carrying out works;
 - (d) not putting at risk the ability of the established undertaker to meet its existing obligations, or likely future obligations, to provide such services. 30 35 40 45
- (7) In this section and sections 110C to 110G –
- “main connection agreement” means an agreement with one or more sewerage undertakers for that undertaker or each of them

to permit a main connection into its sewerage system and includes –

- (a) an order under section 110A which is deemed to be an agreement by virtue of section 110A(4), and
- (b) any agreement which has been varied by order under subsection (1);

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“established undertaker”, in relation to a sewerage agreement, means the sewerage undertaker which is required by the agreement to permit a main connection into its sewerage system.

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110C Codes relating to main connections into sewerage systems

- (1) The Authority may issue one or more codes in respect of main connection agreements.
- (2) A code may set out –
 - (a) a procedure for negotiating an agreement to permit a main connection into sewerage undertaker’s a sewerage system;
 - (b) a procedure for negotiating an agreement to vary or terminate a main connection agreement.
- (3) A code may in particular specify –
 - (a) terms and conditions to be incorporated into a main connection agreement, including terms as to the duration of such an agreement;
 - (b) principles for determining the terms and conditions that should or should not be incorporated into a main connection agreement.
- (4) A code may set out a procedure to be followed by the Authority in determining whether to make an order under section 110A(3) or 110B(1), and such procedure may, in particular, require the Authority to consult the Environment Agency.
- (5) A code may set out the steps to be taken by the Authority in determining what constitutes compliance with the code.
- (6) If the Authority considers that a sewerage undertaker is not acting as required by a code, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (7) It is the duty of a sewerage undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.
- (8) The Authority may issue codes that apply –
 - (a) generally,
 - (b) to a specified person, or
 - (c) to persons of a specified description.

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110D Codes: procedure

- (1) The Authority must prepare a draft of any code under section 110C.
- (2) If the draft code relates to main connection agreements under which either the sewerage undertaker into whose sewerage system a main

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- connection is permitted or the sewerage undertaker benefiting from that connection has an area wholly or mainly in England, the Authority must consult the following about it –
- (a) the Secretary of State;
 - (b) the Environment Agency; 5
 - (c) any sewerage undertakers likely to be affected by the code;
 - (d) such other persons as the Authority thinks appropriate.
- (3) If the draft code relates to main connection agreements under which either the sewerage undertaker into whose sewerage system a main connection is permitted or the sewerage undertaker benefiting from that connection has an area wholly or mainly in Wales, the Authority must consult the following about it – 10
- (a) the Welsh Ministers;
 - (b) the Environment Agency;
 - (c) any sewerage undertakers likely to be affected by the code; 15
 - (d) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the draft code.
- (5) Before a code prepared by the Authority is issued, the Secretary of State may direct the Authority – 20
- (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- The Secretary of State may not give a direction in relation to a code if or to the extent that the Welsh Ministers may give a direction in relation to the code under subsection (6). 25
- (6) Before a code prepared by the Authority is issued, the Welsh Ministers may direct the Authority –
- (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- The Welsh Ministers may give a direction only in relation to a code that relates only to, or in relation to so much of a code as relates to, main connection agreements under which any main connection into a sewerage system is or would be a main connection into the sewerage system of a sewerage undertaker whose area is wholly or mainly in Wales for the benefit of another such sewerage undertaker. 30 35
- (7) A direction under subsection (5) or (6) must be given within the period of 28 days beginning with the day after the end of the consultation period.
- 110E Codes: revision**
- (1) The Authority may revise a code issued under section 110C. 40
 - (2) Sections 110C and 110D apply to a revision as they apply to an original code.
 - (3) A revised code may include provision for applying any of its revisions to main connection agreements made before the revised code comes into effect. 45

110F Charging rules for permitting main connections

- (1) The Authority may issue rules about charges that may be imposed by a sewerage undertaker under a main connection agreement.
- (2) The rules may in particular specify –
 - (a) what types of charge may be imposed; 5
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charge may or may not be imposed; 10
 - (d) principles for determining the amount of any charge that may be imposed.
- (3) The Secretary of State and the Welsh Ministers acting jointly may issue guidance as to the content of rules under this section.
- (4) The Secretary of State and the Welsh Ministers must – 15
 - (a) prepare a draft of any proposed guidance and consult the Authority and the relevant persons about the draft;
 - (b) lay a copy of the guidance before both Houses of Parliament and the Assembly;
 - (c) publish the guidance. 20
- (5) The Authority must have regard to the guidance in making rules under this section.
- (6) The Authority must prepare a draft of any proposed rules and consult the Secretary of State, the Welsh Ministers and the relevant persons about the draft. 25
- (7) The relevant persons are –
 - (a) the Council;
 - (b) any sewerage undertakers likely to be affected by the guidance or (as the case may be) the rules;
 - (c) such other persons as the person or persons consulting thinks or think appropriate. 30
- (8) The rules may make provision which applies –
 - (a) generally,
 - (b) to a specified undertaker, or
 - (c) to undertakers of a specified description. 35
- (9) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a particular thing specified in the direction.
- (10) It is the duty of a sewerage undertaker to comply with a direction under subsection (9), and this duty is enforceable by the Authority under section 18. 40
- (11) The Authority may revise rules under this section.
- (12) This section applies to a revision as to it applies to the original rules made under this section. 45

- (13) Revised rules may include provision for applying any of the revisions to main connection agreements made before the revised rules come into effect.

110G Reduction of charges in particular cases

- (1) A person who is party to a main connection agreement, or who is proposing to enter an agreement that would if made be a main connection agreement, may apply to the Authority for rules under section 110F to be varied so as to enable a reduction in charges payable for permitting a main connection under the agreement or proposed agreement. 5
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- (2) The Authority may grant the application if it is satisfied that—
- (a) a reduction in the charges that would otherwise apply is justified by steps to reduce the cost to the sewerage undertaker of permitting a main connection into its sewerage system that are taken or proposed to be taken by a person (who need not be party to the agreement in question) in respect of relevant premises, and 15
- (b) it is otherwise reasonable to reduce charges imposed in the particular case.
- (3) Premises are relevant premises if matter discharged from those premises uses or would use the main connection to which the agreement or proposed agreement relates. 20
- (4) If the Authority grants the application, it must specify how rules under section 110F are to be varied.
- (5) The Authority may make the effect of some or all of the variations subject to compliance with conditions. 25
- (6) The conditions may be directed to any party to the agreement or proposed agreement.
- (7) The conditions may in particular be designed so as to secure a reduction in the charges payable by a person whose steps or proposed steps are relied on to satisfy the requirement in subsection (2)(a). 30
- (8) The Secretary of State and the Welsh Ministers acting jointly may issue guidance about varying rules under this section.
- (9) The Secretary of State and the Welsh Ministers must—
- (a) prepare a draft of any proposed guidance and consult the Authority and the relevant persons about the draft; 35
- (b) lay a copy of the guidance before both Houses of Parliament and the Assembly;
- (c) publish the guidance.
- (10) The relevant persons are— 40
- (a) any sewerage undertakers likely to be affected by the guidance;
- (b) such other persons as the Secretary of State thinks or the Welsh Ministers think appropriate.
- (11) The Authority must have regard to the guidance in exercising its functions under this section.” 45

- (2) In sections 110B to 110F of the Water Industry Act 1991 (as substituted by subsection (1)) –
- (a) a reference to a main connection agreement includes a reference to an old main connection agreement, and
 - (b) a reference to an established undertaker, in relation to a main connection agreement, is to be construed accordingly. 5
- (3) For the purposes of subsection (2) –
- (a) “old main connection agreement” means an agreement made before the coming into force of subsection (1) that is of the same description as a main connection agreement, and includes an order under old section 110A which is deemed to be an agreement by virtue of old section 110A(5); 10
 - (b) references to old section 110A are references to section 110A, as that section had effect before being substituted under subsection (1).

Inset appointments 15

10 Restriction on appointment in unserved area and large user cases

- (1) Section 7 of the Water Industry Act 1991 (continuity of relevant undertakers’ appointments as regards an area) is amended as follows.
- (2) In subsection (4)(b) (cases where replacement of an undertaker is possible: an area not served by the incumbent undertaker), after “that company” there is inserted “and, in the case of an appointment or variation relating to a part of the area of an undertaker whose area is wholly or mainly in England, the relevant condition in subsection (4A) is satisfied”. 20
- (3) In subsection (4)(bb) (replacement cases: an area containing only large users), for the words from “area and” to “that company;” there is substituted “area and – 25
- (i) the conditions mentioned in subsection (5) are satisfied in relation to each of the premises in those parts which are served by that company, and
 - (ii) in the case of an appointment or variation relating to a part of the area of an undertaker whose area is wholly or mainly in England, the relevant condition in subsection (4A) is satisfied;”. 30
- (4) After subsection (4) there is inserted – 35
- “(4A) The conditions are that –
- (a) the company applying for an appointment or variation replacing a company as a water undertaker is, or is associated with, a company that holds an appointment as a water undertaker in relation to another area at the time the application is made; 40
 - (b) the company applying for an appointment or variation replacing a company as a sewerage undertaker is, or is associated with, a company that holds an appointment as a sewerage undertaker in relation to another area at the time the application is made. 45

- (4B) For the purposes of subsection (4A) one company is associated with another if –
- (a) one of them is a subsidiary of the other, or
 - (b) both are subsidiaries of the same company.
- “Subsidiary” has the meaning given by section 1159 of the Companies Act 2006.” 5
- (5) If a company’s application under section 8 of the Water Industry Act 1991 to replace a water or sewerage undertaker whose area is wholly or mainly in England on the basis of section 7(4)(b) or (bb) of that Act has been made but not determined on the day when subsections (2) to (4) of this section come into force, that application is to be determined as if those subsections were not in force. 10
- (6) In section 7(4) of the Water Industry Act 1991 –
- (a) in paragraph (b) (as amended by subsection (2)), the words from “, in the case” to “in England,” are repealed; 15
 - (b) in paragraph (bb)(ii) (as inserted by subsection (3)), the words from “in the case” to “in England,” are repealed.
- (7) If a company’s application under section 8 of the Water Industry Act 1991 to replace a water or sewerage undertaker whose area is wholly or mainly in Wales on the basis of section 7(4)(b) or (bb) of that Act has been made but not determined on the day when subsection (6) of this section comes into force, that application is to be determined as if that subsection were not in force. 20
- (8) Subsections (6) and (7) come into force on such day as the Minister may by order made by statutory instrument appoint.
- (9) “The Minister” means – 25
- (a) in relation to England, the Secretary of State;
 - (b) in relation to Wales, the Welsh Ministers.
- (10) A statutory instrument containing an order to be made by the Welsh Ministers under subsection (8) may not be made unless a draft has been laid before and approved by a resolution of the National Assembly for Wales. 30

11 Procedure with respect to inset appointments

- (1) Section 8 of the Water Industry Act 1991 (procedure with respect to appointments and variations replacing relevant undertakers) is amended as follows.
- (2) In subsection (2)(a) (the Water Services Regulation Authority to serve notice of application), for “on the existing appointee the NRA and on every” there is substituted “on – 35
- (i) the existing appointee,
 - (ii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water, 40
 - (iii) if the application relates to the replacement of a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies, 45

- (iv) the Environment Agency, and
 - (v) every”.
- (3) In subsection (4)(b) (the Secretary of State or the Water Services Regulation Authority to serve notice of proposed appointment or variation), for “on the existing appointee the NRA and on every” there is substituted “on—
 - (i) the existing appointee,
 - (ii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
 - (iii) if the proposed appointment or variation would replace a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
 - (iv) the Environment Agency, and
 - (v) every”.
- (4) In subsection (5)(b) (the Secretary of State or the Water Services Regulation Authority to serve notice of the making of an appointment or variation), for “on the NRA and on every” there is substituted “on—
 - (i) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in England, the Chief Inspector of Drinking Water,
 - (ii) if the appointment or variation replaces a water undertaker whose area is wholly or mainly in Wales, the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies,
 - (iii) the Environment Agency, and
 - (iv) every”.

Duty of OFT to refer mergers of relevant undertakers to Competition Commission 30

12 Exceptions to duty and undertakings in lieu of merger references

- (1) In section 32 of the Water Industry Act 1991 (duty of OFT to refer merger of water or sewerage undertaking to Competition Commission), for “section 33 below,” there is substituted “sections 33 and 33A,”.
- (2) After section 33, there is inserted — 35
 - “33A Exceptions to duty to make reference**
 - (1) The OFT may decide not to make a merger reference under section 32 as regards a case falling within section 32(a) if it believes that —
 - (a) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference to the Competition Commission;
 - (b) the prospective merger is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or

- (c) the prospective merger is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger.
- (2) The OFT may decide not to make a merger reference under section 32 as regards a case falling within section 32(b) if it believes that – 5
- (a) the merger has not prejudiced and is not likely to prejudice the ability of the Authority, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises; or
- (b) the merger has prejudiced or is likely to prejudice that ability, but the prejudice in question is outweighed by relevant customer benefits relating to the merger. 10
- (3) Before forming a view as to the matters in subsection (1)(b) or (c) or (2)(a) or (b), the OFT must –
- (a) request the Authority to give an opinion under section 33B, and
- (b) consider that opinion. 15
- (4) The OFT may not make a merger reference under section 32 if –
- (a) it is considering whether to accept an undertaking under section 33D instead of making such a reference; or
- (b) it is prevented by section 74 of the Enterprise Act 2002 (effect of accepting an undertaking in lieu), in a case where that section as applied by paragraph 1 of Schedule 4ZA may have effect to prevent such a merger reference. 20
- (5) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the Competition Commission believes are to be read for the purposes of this section as references to what the OFT believes. 25

33B Opinion of the Authority

- (1) Where the OFT makes a request under section 33A(3), the Authority must give its opinion on –
- (a) whether and to what extent the actual or prospective merger has prejudiced or is likely to prejudice the Authority’s ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises, and 30
- (b) where it forms the view that the actual or prospective merger has prejudiced or is likely to prejudice that ability, whether the prejudice in question is outweighed by any relevant customer benefits relating to the merger. 35
- (2) In forming an opinion on the matters in subsection (1), the Authority must apply the methods set out in the statement under section 33C that has effect when the request under section 33A(3) is made. 40
- (3) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that references in paragraph 7 to what the Competition Commission believes are to be read for the purposes of this section as references to what the Authority believes.

33C Statement of methods

- (1) The Authority must prepare and keep under review a statement of the methods to be applied in forming an opinion on the matters in section 33B(1).
- (2) The statement must in particular set out – 5
 - (a) the criteria to be used for assessing the effect of any particular water enterprise ceasing to be a distinct enterprise on the Authority’s ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises;
 - (b) the relative weight to be given to the criteria. 10
- (3) Before preparing or altering the statement, the Authority must consult – 15
 - (a) the Secretary of State,
 - (b) the Welsh Ministers,
 - (c) the OFT,
 - (d) the Competition Commission, and
 - (e) relevant undertakers.
- (4) The Authority must from time to time publish the statement as it has effect for the time being.”
- (3) After section 33C (as inserted by subsection (2)) there is inserted – 20

“33D Undertakings in lieu of a merger reference

- (1) If the OFT considers that it is under a duty to make a merger reference under section 32, it may instead of making such a reference accept undertakings to take such action as the OFT thinks appropriate from such of the parties concerned in the actual or prospective merger as the OFT considers appropriate. 25
- (2) The power under subsection (1) is to be exercised for the purpose of remedying, mitigating or preventing the prejudicial effect on the Authority’s ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises that the actual or prospective merger has had, may have had or may be likely to have. 30
- (3) In forming a view for the purposes of subsection (1) as to whether it is under a duty to make a merger reference under section 32, the OFT – 35
 - (a) is to disregard the effect of section 33A(4)(a), but
 - (b) is to take into account the powers under section 33A(1) and (2) to decide not to make a merger reference.
- (4) In proceeding under subsection (1), the OFT must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudicial effect on the Authority’s ability, in carrying out its functions by virtue of this Act, to make comparisons between water enterprises. 40
- (5) In proceeding under subsection (1), the OFT may, in particular, have regard to the effect of any action on any relevant customer benefits in relation to the actual or prospective merger.
- (6) Before deciding whether or not to accept an undertaking under this section, the OFT must – 45

- (a) request the Authority to give its opinion on the effect of the undertakings offered, and
 - (b) consider the Authority’s opinion.
- (7) Where the OFT makes a request under subsection (6), the Authority must give its opinion on the effect of the undertakings offered. 5
- (8) An undertaking under this section –
- (a) comes into force when accepted;
 - (b) may be varied or superseded by another undertaking under this section;
 - (c) may be released by the OFT. 10
- (9) An undertaking under this section ceases to be in force if an order under section 75 or 76 of the Enterprise Act 2002 (powers to make an order where an undertaking is not fulfilled) is made, in a case where that provision of the Enterprise Act 2002 as applied by paragraph 1 of Schedule 4ZA may have effect in relation to such an undertaking. 15
- (10) The OFT must consider any representations received by it in relation to varying or releasing an undertaking under this section as soon as reasonably practicable.
- (11) In this section “relevant customer benefit” has the meaning given by paragraph 7 of Schedule 4ZA, except that – 20
- (a) references in paragraph 7 to what the Competition Commission believes are to be read for the purposes of subsections (1) to (6) as references to what the OFT believes, and
 - (b) references in paragraph 7 to what the Competition Commission believes are to be read for the purposes of subsection (7) as references to what the Authority believes.” 25
- 13 Exclusion of small mergers: advice of OFT on threshold**
- In section 33 of the Water Industry Act 1991 (exclusion of small mergers from the Office of Fair Trading’s duty to make a reference to the Competition Commission under section 32), after subsection (6) there is inserted – 30
- “(6A) The OFT must –
- (a) keep under review the conditions set out in subsection (1)(a) and (b), and
 - (b) from time to time advise the Secretary of State as to whether the conditions in subsection (1)(a) and (b), and the sums mentioned in those paragraphs, are still appropriate.” 35

Relevant undertakers’ charges

14 Charges schemes

- (1) In section 143 of the Water Industry Act 1991 (charges schemes), for subsections (6) to (9) (charges scheme not to take effect until approved by the Water Services Regulation Authority, etc), there is substituted – 40
- “(6) If the Authority considers that a relevant undertaker’s charges scheme does not comply with –

- (a) subsection (2), (3) or (5),
 - (b) regulations under section 143A,
 - (c) rules under section 143B, or
 - (d) section 144A(9), (10) and (11)(a),
- the Authority may give the undertaker a direction to do, or not to do, a thing specified in the direction. 5
- (6A) It is the duty of a relevant undertaker to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18.”
- (2) After section 143A there is inserted – 10
- “143B Rules about charges schemes**
- (1) The Authority must issue rules about charges schemes under section 143, and the provisions of charges schemes must comply with rules so issued.
- (2) Rules under this section may in particular – 15
 - (a) specify what types of charge may be imposed;
 - (b) specify the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) specify principles for determining what types of charge may or may not be imposed; 20
 - (d) specify methods and principles for determining the amount of any charge that may be imposed;
 - (e) require particular schemes of charges to be available in specified cases. 25
- (3) The rules may make different provision for different cases, including different provision in relation to different, or different descriptions of, persons, circumstances or localities.
- (4) The power to make rules under this section may not be exercised for the purpose of limiting the total revenues of relevant undertakers from charges fixed by or in accordance with charges schemes. 30
- (5) Guidance as to the content of rules under this section may be issued by the Secretary of State and the Welsh Ministers acting jointly.
- (6) The Secretary of State and the Welsh Ministers must – 35
 - (a) prepare a draft of any proposed guidance and consult the Authority and the relevant persons about the draft;
 - (b) lay a copy of the guidance before both Houses of Parliament and the Assembly;
 - (c) publish the guidance.
- (7) The Authority must have regard to the guidance in making rules under this section (as well as to any guidance issued under section 43 or 44 of the Flood and Water Management Act 2010). 40
- (8) The Authority must prepare a draft of any proposed rules and consult the relevant persons about the draft.
- (9) The relevant persons are – 45

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- (a) the Council;
 - (b) any relevant undertakers likely to be affected by the guidance or the rules;
 - (c) such other persons as the Secretary of State and the Welsh Ministers think appropriate. 5
- (10) The Authority may revise rules under this section.
- (11) This section applies to a revision as it applies to the original rules made under this section.”
- 15 Charging rules**
- After section 144 of the Water Industry Act 1991 there is inserted – 10
- “Rules about undertakers’ charges*
- 144ZA Charging rules**
- (1) The Authority must issue rules about charges that may be imposed –
 - (a) by a water undertaker under section 42(2)(a), 45(6), 46(7)(b), 51A(7)(aa) or 51C(2); 15
 - (b) by a sewerage undertaker under section 99(2)(a) or (2A)(a), 101B(3), 104(6B)(c), 105ZA(2) or 107(3)(b)(i).
 - (2) The rules may in particular –
 - (a) specify what types of charges may be imposed;
 - (b) specify the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge; 20
 - (c) specify principles for determining what types of charges may or may not be imposed;
 - (d) specify principles for determining the amount of any charge that may be imposed; 25
 - (e) provide for charges to be payable over a period.
 - (3) The charges that may be imposed by a water undertaker under section 42(2)(a) for the provision of a new water main, or under section 51C(2) for the adoption of a new water main provided by another, may include charges for – 30
 - (a) providing such other infrastructure, including other water mains, as it is necessary to provide in consequence of the provision of the new water main;
 - (b) doing works to increase the capacity of an existing water main, or procuring the doing of such works, where the use of that increased capacity is a consequence of the provision of the new water main. 35
 - (4) The charges that may be imposed by a sewerage undertaker under section 99(2)(a) for the provision of a new public sewer, or under section 105ZA(2) for the adoption of a new sewer provided by another, may include charges for – 40
 - (a) providing such other infrastructure, including other public sewers, as it is necessary to provide in consequence of the provision of the new public sewer; 45

- (b) doing works to increase the capacity of an existing public sewer, where the use of that increased capacity is a consequence of the provision of the new public sewer.
- (5) The rules may provide for the determination of the amount to be paid by – 5
 - (a) a water undertaker under section 51C(5) upon the vesting of a water main in the undertaker;
 - (b) a sewerage undertaker under section 105ZA(4) upon the vesting of a sewer in the undertaker.
- (6) Rules made by virtue of subsection (5) may, in particular, provide for the determination to take into account – 10
 - (a) revenue that might be derived from the water main or sewer in question;
 - (b) costs that might have been incurred in providing such a water main or sewer. 15
- (7) The rules may also make provision as to –
 - (a) the amount of security that may be required by a water undertaker under section 42(1)(b), 47(2)(a) or 51C(4);
 - (b) the amount of security that may be required by a sewerage undertaker under section 99(1)(b), 101B(3A), 105ZA(3) or 107(3)(b)(ii); 20
 - (c) the type of security that may be required;
 - (d) the payment of interest on a sum deposited with a relevant undertaker by way of security.
- (8) If the Authority considers that a relevant undertaker is not acting as required by rules under this section, the Authority may give the undertaker a direction to do, or not to do, a thing specified in the direction. 25
- (9) It is the duty of a relevant undertaker to comply with a direction under subsection (8), and this duty is enforceable by the Authority under section 18. 30
- (10) The rules may make provision which applies –
 - (a) generally,
 - (b) to a specified person or description of person;
 - (c) in relation to a specified power or powers to impose charges. 35

144ZB Section 144ZA: supplementary

- (1) The Secretary of State and the Welsh Ministers acting jointly may issue guidance as to the content of rules under section 144ZA.
- (2) The guidance may, in particular, specify principles that should govern the content of rules. 40
- (3) The Secretary of State and the Welsh Ministers must –
 - (a) prepare a draft of any proposed guidance and consult the Authority and the relevant persons about the draft;
 - (b) lay a copy of the guidance before both Houses of Parliament and the Assembly; 45
 - (c) publish the guidance.

- (4) The Authority must have regard to the guidance in making rules under section 144ZA.
- (5) The Authority must prepare a draft of any proposed rules and consult the relevant persons about the draft.
- (6) The relevant persons are – 5
- (a) the Council;
 - (b) any relevant undertakers likely to be affected by the guidance or the rules;
 - (c) any water supply or sewerage licensees likely to be affected by the guidance or the rules; 10
 - (d) such other persons as the Secretary of State and the Welsh Ministers think appropriate.
- (7) The Authority may revise rules under section 144ZA.
- (8) Section 144ZA and this section apply to a revision as they apply to the original rules.” 15

16 Charges for providing a water main etc

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 42 (financial conditions for compliance with the duty in section 41 to provide a water main) –
- (a) in subsection (1)(b) (condition as to providing security), for the words from “such security” to “reasonably required” there is substituted “such security as charging rules allow and the undertaker may have required”; 20
 - (b) in subsection (2) (undertaking to pay), for paragraph (a) there is substituted – 25
 - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
 - (c) subsections (4) and (5) (interest on sums deposited by way of security) are repealed; 30
 - (d) in subsection (6) (reference of disputes to Water Services Regulation Authority), in paragraph (b), after “the amount” there is inserted “or amounts by way of charges”.
- (3) In section 45 (duty to make domestic connections to a water main) –
- (a) in subsection (2) (the nature of the duty), the words “, at the expense of the person serving the notice,” are repealed; 35
 - (b) for subsection (6) there is substituted – 40
 - “(6) Where a water undertaker carries out any works which it is its duty under this section to carry out, the person serving the notice is liable to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules.”;
 - (c) in subsection (6A) (reference of disputes to Authority), for “as to whether the expenses were incurred reasonably” there is substituted “as to the payments required to be made”.
- (4) In section 46 (duty to carry out ancillary works for the purpose of making a domestic connection under section 45) – 45

- (a) in subsection (1) (the nature of the duty), the words “, at the expense of the person serving the notice,” are repealed;
 - (b) in subsection (7), in paragraph (b), for “under this section at another person’s expense” there is substituted “as its duty under this section”;
 - (c) in subsection (7), in the words after paragraph (b), for “under that section at another person’s expense” there is substituted “as its duty under that section”; 5
 - (d) in subsection (9) (consequences of exercising power under section 46(8) to lay a water main rather than a service pipe), paragraph (b) (maximum expenses recoverable) and the “but” preceding it are repealed. 10
- (5) In section 47 (conditions of connection with water main) –
- (a) in subsection (2)(a) (requirement to give security for amounts to be paid), for the words from “such security” to “reasonably require” there is substituted “such security as charging rules allow and the undertaker requires”; 15
 - (b) in subsection (3B) (reference of disputes to Authority), in the opening words, “whether” is repealed;
 - (c) in subsection (3B), for paragraph (a) there is substituted –
“ (a) the security required to be provided by a condition imposed under subsection (2)(a),”; 20
 - (d) in subsection (3B)(b), at the beginning there is inserted “whether”;
 - (e) in subsection (3B)(c), after “particular case,” there is inserted “whether”.
- (6) In section 51A (agreements to adopt in future a water main laid by another etc), in subsection (7) (terms of agreements) – 25
- (a) in paragraph (a) (provision of infrastructure to be at the expense of the person constructing or proposing to construct the new water main), for the words from the beginning to “person; or” there is substituted “for the provision by –
 - (i) the person constructing or proposing to construct the water main, at the person’s expense; or”; 30
 - (b) after paragraph (a), there is inserted –
“ (aa) for the payment by the person constructing or proposing to construct the water main, in a case where the undertaker is to provide infrastructure as described in paragraph (a), of such charges as the undertaker may impose in accordance with charging rules;”. 35
- (7) In section 51C (financial conditions for undertaker’s compliance with agreement under section 51A) – 40
- (a) in subsection (2), for “the costs mentioned in subsection (3) below” there is substituted “such charges as the undertaker may impose in accordance with charging rules”;
 - (b) subsection (3) (application of section 43) is repealed;
 - (c) for subsection (4) (taking security and paying interest), there is substituted – 45
“ (4) The water undertaker may require the person to provide such security for the payment of the amount of the charges mentioned in subsection (2) or section 51A(7)(aa) as charging rules allow.” 50

- (d) in subsection (5) (water undertaker to pay discounted offset amount on vesting of the adopted main), for “a sum equal to the discounted offset amount” there is substituted “an amount (which may be nil) determined in accordance with charging rules”;
- (e) subsections (6) to (10) (liability to pay amount and calculation of amount) are repealed. 5

17 Charges for providing a public sewer etc

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 99 (financial conditions for compliance with the duty in section 98 to provide a public sewer or lateral drain) – 10
 - (a) in subsection (1)(b) (condition as to providing security), for the words from “such security” to “reasonably required” there is substituted “such security as charging rules allow and the undertaker may have required”;
 - (b) in subsection (2) (undertaking to pay in respect of public sewer), for paragraph (a) there is substituted – 15
 - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
 - (c) in subsection (2A) (undertaking to pay in respect of lateral drain), for paragraph (a) there is substituted – 20
 - “(a) bind the person or persons mentioned in that subsection to pay to the undertaker such charges as the undertaker may impose in accordance with charging rules, and”;
 - (d) subsections (4) and (5) (interest on sums deposited by way of security) are repealed; 25
 - (e) in subsection (6) (reference of disputes to the Water Services Regulation Authority), in paragraph (b), after “the amount” there is inserted “or amounts by way of charges”;
- (3) In section 101B (power to provide lateral drain following provision of public sewer) – 30
 - (a) in subsection (3) (obligation to pay for drain requested), for “the costs reasonably incurred in or in connection with providing that drain” there is substituted “such charges as the undertaker may impose in accordance with charging rules”; 35
 - (b) after subsection (3) there is inserted –
 - “(3A) The sewerage undertaker may require the person making a request under this section to provide such security for the payment of the charges as charging rules allow.”;
 - (c) in subsection (4) (reference of disputes to Authority), for paragraph (b) there is substituted – 40
 - “(b) the amount of any charge imposed.”;
 - (d) in subsection (4), after paragraph (b) there is inserted “or
 - (c) the security required to be provided.”.
- (4) In section 104 (agreements to adopt in future a sewer laid by another etc), after subsection (6A), there is inserted – 45
 - “(6B) The terms of an agreement under this section which relates to

- the construction of a sewer may include in particular –
- (a) terms for the provision of such infrastructure at or downstream of the point of connection with the undertaker’s sewerage system as it is necessary to provide in consequence of incorporating the new sewer; 5
 - (b) terms for such infrastructure to be provided –
 - (i) by the person who is constructing or proposing to construct the sewer as mentioned in subsection (1)(a) and at the person’s expense, or 10
 - (ii) by the sewerage undertaker;
 - (c) terms for the payment to the undertaker, in a case where the undertaker provides infrastructure, of such charges as the undertaker may impose in accordance with charging rules.”
- (5) After section 105 there is inserted – 15
- “105ZA Financial conditions of compliance**
- (1) This section applies where an agreement is, or is to be, entered into under section 104 in relation to a sewer (“the adopted sewer”) by, or on behalf of, a sewerage undertaker and a person mentioned in section 104(1)(a) or (b). 20
 - (2) The sewerage undertaker may, as a condition of its compliance with the agreement, require the person to pay to it such charges as the undertaker may impose in accordance with charging rules.
 - (3) The sewerage undertaker may require the person to provide such security for the payment of the amount of the charges mentioned in subsection (2) or section 104(6B)(c) as charging rules allow. 25
 - (4) The sewerage undertaker, upon declaring the sewer to be vested in the undertaker, is to pay to the person an amount (which may be nil) determined in accordance with charging rules.
 - (5) Any dispute between the sewerage undertaker and the person as to the payments required to be made or the security required to be provided may be referred to the Authority for determination under section 30A by either party to the dispute.” 30
- (6) In section 107 (right of a sewerage undertaker to undertake the making of a communication with a public sewer) – 35
- (a) in subsection (3)(b)(i) (no obligation for undertaker to act until paid an estimated cost of the work in advance), for “the cost of the work” there is substituted “the amount by way of charges that the undertaker may impose in accordance with charging rules for making the connection”;
 - (b) in subsection (3)(b)(ii) (no obligation for undertaker to act until given security for payment), for “such security” to the end there is substituted “such security for the payment of that amount as charging rules allow and it may have required.”; 40
 - (c) for subsection (4), there is substituted –
 - “(4) If a payment to a sewerage undertaker under subsection (3) exceeds the charges that may, in the event, be imposed in accordance with charging rules for making the connection in question, the excess is to be repaid by the undertaker; and, if 45

- and so far as those charges are not covered by a payment under subsection (3), those charges are to be paid by the person for whom the work was undertaken.”;
- (d) in subsection (4A) (reference to disputes to Authority), in paragraph (a), for “of the cost of works” there is substituted “of the amount of charges”; 5
 - (e) in subsection (4A), for paragraph (b) (and the “or” following it) there is substituted –
 - “(b) the security required by the undertaker, or”;
 - (f) in subsection (4A), for paragraph (c) there is substituted – 10
 - “(c) whether any excess is repayable, or any charges are payable, under subsection (4), or the amount of any such excess or charges.”.

Regulation of relevant undertakers, water supply licensees and sewerage licensees

18 Extension of time limit for imposing financial penalties 15

- (1) In section 22C of the Water Industry Act 1991 (time limits on the imposition of financial penalties), in subsection (1), for “twelve months” there is substituted “five years”.
- (2) But subsection (1) does not apply in relation to a contravention or failure which – 20
 - (a) occurred before the date on which this section comes into force, and
 - (b) is not continuing on that date.

19 Conduct of marketing activities

After section 30A of the Water Industry Act 1991 there is inserted –

“Provision with respect to marketing 25

30B Conduct of marketing activities

- (1) The Secretary of State may, on application by the Authority, by order made by statutory instrument make provision in relation to –
 - (a) the conduct of marketing activities that are directed to non-household customers and undertaken by or on behalf of relevant undertakers, water supply licensees and sewerage licensees; 30
 - (b) the publication of information to assist non-household customers in choosing or changing their suppliers of water or providers of sewerage services. 35
- (2) For the purposes of subsection (1) a customer is a non-household customer if the premises supplied or served are not household premises (as defined in section 17C).
- (3) Requirements imposed on relevant undertakers, water supply licensees and sewerage licensees by an order under subsection (1) are to be enforceable under section 18 by the Authority. 40
- (4) The Secretary of State may make an order under subsection (1) if –

- (a) the application complies with subsection (5);
 - (b) the Secretary of State is satisfied that the Authority has sufficiently consulted the persons mentioned in subsection (6) as regards the application and any modifications proposed by the Secretary of State, and 5
 - (c) the Secretary of State has considered the proposals, the Authority’s reasons for its proposals, and any representations made by persons consulted.
- (5) An application must set out – 10
- (a) the Authority’s proposals for the making of an order under subsection (1);
 - (b) a summary of the Authority’s reasons for its proposals.
- (6) The persons are – 15
- (a) the Welsh Ministers;
 - (b) the Council;
 - (c) relevant undertakers, water supply licensees and sewerage licensees;
 - (d) such other persons as the Secretary of State considers appropriate.
- (7) An order under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.” 20

20 Standards of performance: water supply licensees

- (1) After section 38 of the Water Industry Act 1991 there is inserted –
- “38ZA Standards of performance in connection with the supply of water: water supply licensees 25**
- (1) For the purpose of establishing overall standards of performance in connection with the supply of water by water supply licensees in accordance with their retail authorisations, the Secretary of State may, in accordance with section 39ZA, by regulations – 30
- (a) impose requirements in connection with such supplies of water;
 - (b) provide for a requirement so imposed to be enforceable under section 18 by – 35
 - (i) the Secretary of State, or
 - (ii) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (2) The Secretary of State may, in accordance with section 39ZA, by regulations prescribe such standards of performance in connection with the provision of supplies of water as, in the Secretary of State’s opinion, ought to be achieved in individual cases.
- (3) Regulations under subsection (2) may provide that if a water supply licensee fails to meet a prescribed standard the licensee must pay such amount as may be prescribed to any person who – 40
- (a) is affected by the failure, and
 - (b) is of a prescribed description.

- (4) Without prejudice to the generality of the power conferred by subsection (2), regulations under subsection (2) may –
- (a) include in a standard of performance a requirement for a water supply licensee, in prescribed circumstances, to inform a person of that person’s rights by virtue of any such regulations; 5
 - (b) provide for a dispute under the regulations to be referred by either party to the dispute to the Authority;
 - (c) make provision for the procedure to be followed in connection with any such reference and for the Authority’s determination on such a reference to be enforceable in such manner as may be prescribed; 10
 - (d) prescribe circumstances in which a water supply licensee is to be exempted from requirements of the regulations.
- (5) Where the Authority determines any dispute in accordance with regulations under this section it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.” 15
- (2) Section 38A of that Act (information as to levels of performance) is amended in accordance with subsections (3) to (6).
- (3) In subsection (1) (duty of Water Services Regulation Authority to collect information) – 20
- (a) the “and” following paragraph (a) is repealed;
 - (b) after paragraph (a) there is inserted –
 - “(aa) the compensation paid by water supply licensees under regulations under section 38ZA(2); and”; 25
 - (c) in paragraph (b), after “water undertakers” there is inserted “or water supply licensees”.
- (4) After subsection (2) there is inserted –
- “(2A) At such times as the Authority may direct, each water supply licensee is to give the following information to the Authority – 30
- (a) as respects each standard established by regulations under section 38ZA(1), such information with respect to the level of performance achieved by the licensee as may be prescribed;
 - (b) as respects each standard prescribed by regulations under section 38ZA(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation.” 35
- (5) In subsection (3) (offence of failing to comply with subsection (2)) –
- (a) after “water undertaker” there is inserted “or water supply licensee”;
 - (b) for “anything required of him by subsection (2) above” there is substituted “anything that subsection (2) or (2A) requires that undertaker or licensee to do”. 40
- (6) In subsection (4) (publication of information collected), after “water undertakers” there is inserted “or water supply licensees”.

- (7) After section 39 there is inserted –

“39ZA Procedure for regulations under section 38ZA

- (1) Section 39 applies for the purposes of making regulations under section 38ZA as it applies for the purposes of making regulations under section 38. 5
- (2) In the application of section 39 by virtue of subsection (1), a reference to a water undertaker is to be treated as a reference to a water supply licensee.”

21 Standards of performance: sewerage licensees

- (1) After section 95 of the Water Industry Act 1991 there is inserted – 10

“95ZA Standards of performance in connection with the provision of sewerage services: sewerage licensees

- (1) For the purpose of establishing overall standards of performance in connection with the provision of sewerage services by sewerage licensees in accordance with their retail authorisations, the Secretary of State may, in accordance with section 96ZA, by regulations – 15
- (a) impose requirements in connection with the provision of sewerage services;
- (b) provide for a requirement so imposed to be enforceable under section 18 by – 20
- (i) the Secretary of State, or
- (ii) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (2) The Secretary of State may, in accordance with section 96ZA, by regulations prescribe such standards of performance in connection with the provision of sewerage services as, in the Secretary of State’s opinion, ought to be achieved in individual cases. 25
- (3) Regulations under subsection (2) may provide that if a sewerage licensee fails to meet a prescribed standard the licensee must pay such amount as may be prescribed to any person who – 30
- (a) is affected by the failure, and
- (b) is of a prescribed description.
- (4) Without prejudice to the generality of the power conferred by subsection (2), regulations under subsection (2) may – 35
- (a) include in a standard of performance a requirement for a sewerage licensee, in prescribed circumstances, to inform a person of that person’s rights by virtue of any such regulations;
- (b) provide for a dispute under the regulations to be referred by either party to the dispute to the Authority;
- (c) make provision for the procedure to be followed in connection with any such reference and for the Authority’s determination on such a reference to be enforceable in such manner as may be prescribed; 40
- (d) prescribe circumstances in which a sewerage licensee is to be exempted from requirements of the regulations. 45

- (5) Where the Authority determines any dispute in accordance with regulations under this section it must, in such manner as may be specified in the regulations, give its reasons for reaching its decision with respect to the dispute.”
- (2) Section 95A of that Act (information as to levels of performance) is amended in accordance with subsections (3) to (6). 5
- (3) In subsection (1) (duty of Water Services Regulation Authority to collect information) –
- (a) the “and” following paragraph (a) is repealed;
- (b) after paragraph (a) there is inserted – 10
- “(aa) the compensation paid by sewerage licensees under regulations under section 95ZA(2); and”;
- (c) in paragraph (b), after “sewerage undertakers” there is inserted “or sewerage licensees”.
- (4) After subsection (2) there is inserted – 15
- “(2A) At such times as the Authority may direct, each sewerage undertaker or sewerage licensee is to give the following information to the Authority –
- (a) as respects each standard established by regulations under section 95ZA(1), such information with respect to the level of performance achieved by the licensee as may be prescribed; 20
- (b) as respects each standard prescribed by regulations under section 95ZA(2), the number of cases in which compensation was paid and the aggregate amount or value of that compensation.” 25
- (5) In subsection (3) (offence of failing to comply with subsection (2)) –
- (a) after “sewerage undertaker” there is inserted “or sewerage licensee”;
- (b) for “anything required of him by subsection (2) above” there is substituted “anything that subsection (2) or (2A) requires that undertaker or licensee to do”. 30
- (6) In subsection (4) (publication of information collected), after “sewerage undertakers” there is inserted “or sewerage licensees”.
- (7) After section 96 there is inserted –
- “96ZA Procedure for regulations under section 95ZA**
- (1) Section 96 applies for the purposes of making regulations under section 95ZA) as it applies for the purposes of making regulations under section 95. 35
- (2) In the application of section 96 by virtue of subsection (1), a reference to a sewerage undertaker is to be treated as a reference to a sewerage licensee.” 40

22 Obtaining information for enforcement purposes

- (1) Section 203 of the Water Industry Act 1991 (power to acquire information for enforcement purposes) is amended as follows.

- (2) For subsection (1) there is substituted –
- “(1) The Minister or the Authority may serve a notice under subsection (2) in respect of –
- (a) a company that holds an appointment as a relevant undertaker, if of the opinion that Condition 1 is satisfied, or 5
 - (b) a person who holds a licence under Chapter 1A of Part 2, if of the opinion that Condition 2 is satisfied.
- (1A) Condition 1 is that the company –
- (a) may be contravening, or may have contravened, a condition of the appointment or a statutory or other requirement enforceable under section 18, 10
 - (b) may be causing or contributing to, or may have caused or contributed to, a contravention by another company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18, 15
 - (c) may be causing or contributing to, or may have caused or contributed to, a contravention by a person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18, 20
 - (d) has not met the standards prescribed under section 38(2) in connection with the provision of supplies of water, or
 - (e) has not met the standards prescribed under section 95(2) in connection with the provision of sewerage services.
- (1B) Condition 2 is that the person – 25
- (a) may be contravening, or may have contravened, a condition of the licence or a statutory or other requirement enforceable under section 18,
 - (b) may be causing or contributing to, or may have caused or contributed to, a contravention by a company holding an appointment as a relevant undertaker of a condition of the appointment or a statutory or other requirement enforceable under section 18, 30
 - (c) may be causing or contributing to, or may have caused or contributed to, a contravention by another person holding a licence under Chapter 1A of Part 2 of a condition of the licence or a statutory or other requirement enforceable under section 18, 35
 - (d) has not met the standards prescribed under section 38ZA(2) in connection with the provision of water supplies, or 40
 - (e) has not met the standards prescribed under section 95ZA(2) in connection with the provision of sewerage services.
- (1C) The notice may be served –
- (a) on any person;
 - (b) for any purpose connected with powers under Chapter 2 of Part 2.” 45
- (3) In subsections (2) and (6), for “Secretary of State”, in each place where those words occur, there is substituted “Minister”.
- (4) In subsection (7) –

- (a) for “or licence” there is substituted “or a person holding such a licence”;
 - (b) the words “to him” are repealed;
 - (c) the words “him with” are repealed.
- (5) After subsection (7) there is inserted –
- “(8) “The Minister” means – 5
 - (a) the Secretary of State in respect of –
 - (i) any relevant undertaker whose area is wholly or mainly in England; 10
 - (ii) any water supply licensee or sewerage licensee carrying out licensed activities using the supply system or sewerage system of any such undertaker;
 - (b) the Welsh Ministers in respect of –
 - (i) any relevant undertaker whose area is wholly or mainly in Wales; 15
 - (ii) any water supply licensee or sewerage licensee carrying out licensed activities using the supply system or sewerage system of any such undertaker.
 - (9) In this section –
 - (a) references to the supply system of a water undertaker are to be construed in accordance with section 17B; 20
 - (b) references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(8).”

23 Modification of appointment and licence conditions

- (1) The Water Services Regulation Authority may modify the conditions of appointment of a company appointed under Chapter 1 of Part 2 of the Water Industry Act 1991 to be a water or sewerage undertaker where it considers it necessary or expedient to do so in consequence of amendments to that Act made by – 25
- (a) Part 1;
 - (b) Schedule 7; 30
 - (c) an order under section 3.
- (2) The Authority may modify the conditions of a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 relating to the supply of water where it considers it necessary or expedient to do so in consequence of amendments to that Act made by – 35
- (a) sections 1 and 2 and Schedules 1 and 2;
 - (b) section 6;
 - (c) section 19;
 - (d) section 20;
 - (e) Schedule 5; 40
 - (f) Schedule 7;
 - (g) an order under section 3.
- (3) The Authority may modify the conditions of a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 relating to the provision of sewerage services where it considers it necessary or expedient to do so in consequence of amendments to that Act made by Schedule 5. 45

- (4) Where the Authority modifies –
- (a) conditions of appointment under subsection (1), or
 - (b) conditions of a licence under subsection (2) or (3),
- it may make such incidental or consequential modifications of other conditions of the appointment or, as the case may be, other conditions of the licence as it considers necessary or expedient. 5
- (5) Before making any modifications under subsection (1), (2), (3) or (4), the Authority must consult –
- (a) the company holding the appointment or, as the case may be, the person holding the licence, and 10
 - (b) such other persons (if any) as the Authority thinks it appropriate to consult.
- (6) The powers of the Authority under subsections (1) to (4) may not be exercised after the end of the period of two years beginning with –
- (a) the first day on which all of the provisions of Part 1 of this Act and Schedule 7 are in force in relation to England and Wales, or 15
 - (b) the day on which the repeal of paragraph 9(b) of Schedule 2A to the Water Industry Act 1991 by order under section 3 comes into force, in a case where section 17A(3)(b) is not repealed by order under section 3 before or at the same time as Schedule 2 comes into force. 20

PART 2

WATER RESOURCES

24 Frequency of water resources management and drought plans

- (1) The Water Industry Act 1991 is amended as follows.
- (2) In section 37A (water resources management plans: preparation and review) – 25
- (a) in subsection (1), after “prepare” there is inserted “, publish”;
 - (b) in subsection (4), after “preparing” there is inserted “and publishing”;
 - (c) in subsection (6), in the opening words, after “prepare” there is inserted “and publish”.
- (3) In section 37D (water resources management plans: supplementary), after subsection (3) there is inserted – 30
- “(4) The Minister may by order made by statutory instrument change the period for the time being specified in section 37A(6)(c).
- (5) In subsection (4), “the Minister” means – 35
- (a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and
 - (b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales.
- (6) A statutory instrument containing an order made by the Secretary of State under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament. 40
- (7) A statutory instrument containing an order made by the Welsh Ministers under subsection (4) is subject to annulment in pursuance of a resolution of the Assembly.

- (8) Subsection (9) applies in relation to a statutory instrument containing both—
- (a) an order made by the Secretary of State under subsection (4), and
 - (b) an order made by the Welsh Ministers under subsection (4). 5
- (9) If in accordance with subsection (6) or (7) (negative resolution procedure)—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or 10
 - (b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled,
- the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.”
- (4) In section 39B (drought plans: preparation and review)— 15
- (a) in subsection (1), after “prepare” there is inserted “, publish”;
 - (b) in subsection (6)—
 - (i) in the opening words, after “prepare” there is inserted “and publish”;
 - (ii) in paragraph (c) (long-stop date) for “three years” there is substituted “five years”. 20
- (5) After section 39C (drought plans: provision of information) there is inserted—
- “39D Drought plans: supplementary**
- (1) The Minister may by order made by statutory instrument amend the period for the time being specified in section 39B(6)(c). 25
- (2) In subsection (1), “the Minister” means—
- (a) the Secretary of State, in relation to an order applying to water undertakers whose areas are wholly or mainly in England, and
 - (b) the Welsh Ministers, in relation to an order applying to water undertakers whose areas are wholly or mainly in Wales. 30
- (3) A statutory instrument containing an order made by the Secretary of State under subsection (1) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing an order made by the Welsh Ministers under subsection (1) is subject to annulment in pursuance of a resolution of the Assembly. 35
- (5) Subsection (6) applies in relation to a statutory instrument containing both—
- (a) an order made by the Secretary of State under subsection (1), and
 - (b) an order made by the Welsh Ministers under subsection (1). 40
- (6) If in accordance with subsection (3) or (4) (negative resolution procedure)—
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing an order made by the Secretary of State be annulled, or 45

(b) the Assembly resolves that an instrument containing an order made by the Welsh Ministers be annulled, the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.”

25 Maps of waterworks 5

(1) Section 195 of the Water Resources Act 1991 (duty of Environment Agency to keep records of location of waterworks) is repealed.

(2) In Schedule 23 to that Act (mineral rights), in paragraph 7(2) (structures and underground works which comprise Environment Agency’s undertaking), for paragraph (b) there is substituted – 10

“(b) any resource mains, discharge pipes or other underground works which are for the time being vested in the Agency.”

PART 3

ENVIRONMENTAL REGULATION

26 Regulation of the water environment 15

(1) The Minister may by regulations make provision for any of the purposes listed in Part 1 of Schedule 6; and Part 2 of that Schedule has effect for supplementing Part 1.

(2) Any provision so made is to be provision for or in connection with – 20
(a) regulating the use of water resources,
(b) securing the drainage of land or the management of flood risk, or
(c) safeguarding the movement of fish through regulated waters.

(3) In making regulations under this section, the Minister is to have regard to the desirability of reducing burdens by ensuring that so far as is reasonably practicable any system established by regulations under this section is combined with, or is consistent with, systems for regulating activities or other matters that cause pollution. 25

(4) Regulations under this section may – 30
(a) contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions amending, repealing or revoking enactments) as the Minister considers appropriate, and
(b) make different provision for different cases, including different provision in relation to different persons, circumstances, areas or localities.

(5) Before making any regulations under this section, the Minister is to consult – 35
(a) the Environment Agency;
(b) such bodies or persons appearing to the Minister to be representative of the interests of local government, industry, agriculture and small businesses respectively as the Minister may consider appropriate;
(c) such other bodies or persons as the Minister may consider appropriate. 40

(6) It is immaterial for the purposes of subsection (5) whether consultation is carried out before or after the coming into force of this section.

- (7) In this section and Schedule 6 a reference to the use of water resources –
- (a) includes a reference to taking, diverting or impounding water from any inland waters, or taking water contained in underground strata, and applying it to any purpose, and
 - (b) includes a reference to wasting water whether by action or omission, but
 - (c) does not include a reference to the use, by a person other than a water undertaker, of water drawn from a water mains or pipe forming part of a system used by a water undertaker in carrying out a duty under section 37 of the Water Industry Act 1991.
- (8) In this section and Schedule 6 –
- “enactment” includes –
 - (a) an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978;
 - (b) an Act or Measure of the National Assembly for Wales;
 - “fish” means freshwater fish and migratory fish;
 - “flood” has the meaning given in section 1 of the Flood and Water Management Act 2010;
 - “flood risk” has the meaning given in section 2 of that Act;
 - “freshwater fish” means any fish habitually living in fresh water;
 - “inland waters” has the meaning given by section 221(1) of the Water Resources Act 1991;
 - “migratory fish” means fish of a kind which migrates from fresh to salt water, or from salt to fresh water, in order to spawn;
 - “the Minister” means –
 - (a) the Secretary of State in relation to England, and
 - (b) the Welsh Ministers in relation to Wales;
 - “regulated waters” means –
 - (a) inland waters, and
 - (b) waters adjoining the coast of England and Wales to a distance of six nautical miles measured from the baselines from which the breadth of the territorial sea is measured;
 - “Wales” has the meaning given in section 158(1) of the Government of Wales Act 2006.
- (9) The reference in subsection (7)(a) to water contained in underground strata is to be read in accordance with section 221(3) of the Water Resources Act 1991, as if this section formed part of that Act.
- (10) Regulations made in reliance on subsection (2)(c) are not to apply to the Tweed district (as defined in article 2(1) of the Scotland Act 1998 (River Tweed) Order 2006 (S.I. 2006/2913)).
- (11) Regulations under this section may make provision applying in relation to (and to places above and below) the territorial waters adjacent to any part of England and Wales.
- 27 Environmental regulation: procedure**
- (1) The power to make regulations under section 26 is to be exercised by statutory instrument.

-
- (2) A statutory instrument containing regulations made by the Secretary of State under section 26 is subject to annulment in pursuance of a resolution of either House of Parliament, subject as follows.
- (3) A statutory instrument containing regulations made by the Welsh Ministers under section 26 is subject to annulment in pursuance of a resolution of the National Assembly for Wales, subject as follows. 5
- (4) A statutory instrument containing any of the following regulations (whether alone or with other regulations) is subject to the affirmative resolution procedure –
- (a) the first regulations to be made by the Secretary of State under section 26; 10
 - (b) the first regulations to be made by the Welsh Ministers under section 26;
 - (c) regulations under section 26 which create an offence or increase a penalty for an existing offence; 15
 - (d) regulations under section 26 which amend or repeal any provision of an Act, or an Act or Measure of the National Assembly for Wales.
- (5) A statutory instrument containing regulations made by the Secretary of State under both section 26 above and section 2 of the Pollution Prevention and Control Act 1999 is subject to the affirmative resolution procedure if an instrument containing only –
- (a) the regulations made by the Secretary of State under section 26 above, or
 - (b) the regulations made by the Secretary of State under section 2 of the Pollution Prevention and Control Act 1999, 20
- would be subject to the affirmative resolution procedure. 25
- (6) A statutory instrument containing regulations made by the Welsh Ministers under both section 26 above and section 2 of the Pollution Prevention and Control Act 1999 is subject to the affirmative resolution procedure if an instrument containing only –
- (a) the regulations made by the Welsh Ministers under section 26 above, or
 - (b) the regulations made by the Welsh Ministers under section 2 of the Pollution Prevention and Control Act 1999, 30
- would be subject to the affirmative resolution procedure.
- (7) A statutory instrument containing regulations made by the Secretary of State that is subject to the affirmative resolution procedure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 35
- (8) A statutory instrument containing regulations made by the Welsh Ministers that is subject to the affirmative resolution procedure may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales. 40
- (9) Subsections (11) and (12) apply in relation to a statutory instrument containing both –
- (a) regulations under section 26 made or to be made by the Secretary of State, and
 - (b) regulations under section 26 made or to be made by the Welsh Ministers. 45

- (10) Subsections (11) and (12) also apply in relation to a statutory instrument containing—
- (a) regulations under section 26 made or to be made by the Secretary of State,
 - (b) regulations under section 26 made or to be made by the Welsh Ministers, and 5
 - (c) regulations made under section 2 of the Pollution Prevention and Control Act 1999 (whether by the Secretary of State or the Welsh Ministers or both).
- (11) If in accordance with subsection (2) or (3) (negative resolution procedure)— 10
- (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing regulations made by the Secretary of State be annulled, or
 - (b) the National Assembly for Wales resolves that an instrument containing regulations made by the Welsh Ministers be annulled, 15
- nothing further is to be done under the instrument after the date of the resolution and Her Majesty may by Order in Council revoke the instrument.
- (12) If any of the regulations are subject to the affirmative resolution procedure, all of them are subject to that procedure.
- (13) In section 2 of the Pollution Prevention and Control Act 1999, after subsection (9) there is inserted— 20
- “(10) See section 27 of the Water Act 2013 for further provision about the procedure applying to statutory instruments containing both regulations made under this section and regulations made under section 26 of that Act.” 25

28 Repeal of certain provisions about culverts

The following provisions of the Public Health Act 1936 are repealed—

- (a) section 262 (power of local authority to require culverting of watercourses and ditches where building operations in prospect);
- (b) section 263 (watercourses in urban districts not to be culverted except in accordance with approved plans); 30
- (c) section 264 (urban authority may require repair and cleansing of culverts).

PART 4

GENERAL AND FINAL 35

29 Minor and consequential amendments

Schedule 7 (minor and consequential amendments) has effect.

30 Power to provide for consequential amendments etc

- (1) The Secretary of State may by order made by statutory instrument make such provision as the Secretary of State considers appropriate in consequence of this Act. 40
- (2) The power conferred by subsection (1) includes power—

- (a) to make transitional, transitory or saving provision;
 - (b) to amend, repeal, revoke or otherwise modify any provision made by or under an enactment (including any enactment passed or made in the same Session as this Act).
 - (3) A statutory instrument containing (whether alone or with other provision) an order under this section which amends, repeals or revokes any provision of primary legislation is not to be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 5
 - (4) A statutory instrument containing an order under this section which does not amend, repeal or revoke any provision of primary legislation is subject to annulment in pursuance of a resolution of either House of Parliament. 10
 - (5) In this section –
 - “enactment” includes a Measure or Act of the National Assembly for Wales;
 - “primary legislation” means – 15
 - (a) an Act of Parliament, and
 - (b) a Measure or Act of the National Assembly for Wales.
- 31 Transitional, transitory or saving provision**
- The Secretary of State may by order made by statutory instrument make such transitional, transitory or saving provision as the Secretary of State considers appropriate in connection with the coming into force of any provision of this Act. 20
- 32 Extent**
- (1) This Act extends to England and Wales only, subject as follows.
 - (2) Any amendment or repeal made by this Act has the same extent as the enactment to which it relates. 25
- 33 Commencement**
- (1) The following provisions of this Act come into force on the day on which it is passed –
 - (a) section 5(2) to (4); 30
 - (b) section 6(3) to (8);
 - (c) section 10(8) to (10);
 - (d) sections 30, 31, and 32;
 - (e) this section;
 - (f) section 34. 35
 - (2) The following provisions of this Act come into force as follows –
 - (a) section 5(1), together with Schedule 5, comes into force in accordance with section 5(2) to (4);
 - (b) subsections (1) and (2) of section 6 come into force in accordance with section 6(3) to (8); 40
 - (c) subsections (6) and (7) of section 10 come into force in accordance with section 10(8) to (10).

- (3) The following provisions of this Act come into force at the end of the period of two months beginning with the day on which it is passed –
- (a) section 3;
 - (b) paragraph 5 of Schedule 7 (and section 29 so far as relating to paragraph 5);
 - (c) paragraph 85 of Schedule 7 (and section 29 so far as relating to paragraph 85).
- (4) The remaining provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint.

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34 Short title

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This Act may be cited as the Water Act 2013.

SCHEDULES

SCHEDULE 1

Section 1

WATER SUPPLY LICENCES: AUTHORISATIONS

“SCHEDULE 2A

WATER SUPPLY LICENCES: AUTHORISATIONS

5

Operation of the authorisations in England and Wales

- 1 In the descriptions of the following authorisations, a reference to the supply system of a water undertaker is a reference to the supply system of a water undertaker whose area is wholly or mainly in England –
 - (a) a retail authorisation; 10
 - (b) a wholesale authorisation;
 - (c) a retail infrastructure authorisation;
 - (d) a network infrastructure authorisation.
- 2 In the descriptions of the following authorisations, a reference to the supply system of a water undertaker is a reference to the supply system of a water undertaker whose area is wholly or mainly in Wales –
 - (a) a restricted retail authorisation; 15
 - (b) a supplementary authorisation.

Retail authorisation

- 3 A retail authorisation given by a water supply licence is an authorisation to the water supply licensee to use the supply system of a water undertaker for the purpose of supplying water to the premises of –
 - (a) the licensee, 20
 - (b) persons associated with the licensee, or
 - (c) the licensee’s customers. 25
- 4 None of the premises supplied by a water supply licensee under a retail authorisation may be household premises (as defined in section 17C).

Wholesale authorisation

- 5 A wholesale authorisation given by a water supply licence is an authorisation to the water supply licensee to introduce water into the supply system of a water undertaker –
 - (a) by means of which system any particular supply in accordance with a retail authorisation (whether the licensee’s or another water supply licensee’s) is to take place, and 30

- (b) where that introduction is to be made in connection with that intended supply.

Retail infrastructure authorisation

- 6 A retail infrastructure authorisation given by a water supply licence is an authorisation to the water supply licensee to take water from the water supply system of a water undertaker and convey it by means of the licensee's retail infrastructure to— 5
- (a) premises that the licensee is to supply in accordance with the licensee's retail authorisation (if the licensee has one), or
- (b) premises that another water supply licensee is to supply in accordance with that licensee's retail authorisation. 10

Network infrastructure authorisation

- 7 A network infrastructure authorisation given by a water supply licence is an authorisation to the water supply licensee to take water from the water supply system of a water undertaker into the licensee's network infrastructure, and at a separate point in that system to introduce that or other water from that infrastructure into that system, in circumstances where the taking and introduction of water is to be done in connection with the supply of water by means of that system to— 15
- (a) premises that the licensee is to supply in accordance with the licensee's retail authorisation (if the licensee has one), or 20
- (b) premises that another water supply licensee is to supply in accordance with that licensee's retail authorisation.

Restricted retail authorisation

- 8 A restricted retail authorisation given by a water supply licence is an authorisation to the water supply licensee to use the supply system of a water undertaker for the purpose of supplying water to the premises of the licensee's customers. 25
- 9 The following requirements must be satisfied in relation to each of the premises to be supplied by a water supply licensee under a restricted retail authorisation— 30
- (a) the requirement that the premises are not household premises (as defined in section 17C);
- (b) the threshold requirement (construed in accordance with section 17D). 35

Supplementary authorisation

- 10 A supplementary authorisation given by a water supply licence is an authorisation to the water supply licensee to introduce water into the supply system of a water undertaker—
- (a) by means of which system any particular supply in accordance with the licensee's restricted retail authorisation is to take place, and 40
- (b) where that introduction is to be made in connection with that intended supply.

Enforcement and guidance

- 11 The requirements in paragraphs 4 and 9 are enforceable by the Authority under section 18.
- 12 The Authority may, with the approval of the Secretary of State, issue guidance as to the factors that are, or are not, to be taken into account in determining the extent of any premises for the purposes of paragraphs 4 and 9. 5

Interpretation

- 13 For the purposes of this Schedule, a person (A) is associated with a water supply licensee (L) if— 10
- (a) where A and L are bodies corporate, one of them is a subsidiary of the other or both are subsidiaries of the same body corporate;
 - (b) where A or L is an individual or an unincorporated association and the other is a body corporate, that individual or unincorporated association controls the other or a body corporate of which the other is a subsidiary; 15
 - (c) A is a partnership of which L is a member.
- 14 In paragraph 13 “subsidiary” has the meaning given by section 1159 of the Companies Act 2006; and sections 450(1) to (4) and 451(1) to (3) of the Corporation Taxes Act 2010 (control of a company) apply for the purposes of paragraph 13 as they apply for the purposes of Part 10 of that Act. 20
- 15 A reference in this Chapter to the retail infrastructure of a water supply licensee is a reference to any pipe, structure, installation or apparatus vesting in or belonging to the licensee that is used in connection with— 25
- (a) taking water from a water undertaker’s supply system, and
 - (b) conveying it to particular premises.
- 16 A reference in this Chapter to the network infrastructure of a water supply licensee is a reference to any pipe, structure, installation or apparatus vesting in or belonging to the licensee that is used in connection with— 30
- (a) taking water from a water undertaker’s supply system, and
 - (b) at a separate point in that system, introducing that or other water into that system.”

SCHEDULE 2

Section 1

WATER UNDERTAKERS’ DUTIES AS REGARDS WATER SUPPLY LICENSEES

- 1 For sections 66A to 66C of the Water Industry Act 1991, and the Chapter 35

heading and italic heading preceding section 66A, there is substituted –

“SUPPLY DUTIES ETC: WATER SUPPLY LICENSEES

Duties of undertakers to supply water supply licensees etc

66A Use of water undertaker's supply system

- | | | |
|-----|--|----|
| (1) | This section applies where a water supply licensee with a retail authorisation (“L”) requests a water undertaker to permit the use of the undertaker's supply system for the purpose of supplying water to premises that – | 5 |
| | (a) L is to supply in accordance with L's retail authorisation, and | |
| | (b) are in the area of the undertaker. | 10 |
| (2) | This section also applies where a water supply licensee with a restricted retail authorisation (“R”) requests a water undertaker to permit the use of the undertaker's supply system for the purpose of supplying water to premises that – | |
| | (a) R is to supply in accordance with R's restricted retail authorisation, and | |
| | (b) are in the area of the undertaker. | 15 |
| (3) | Where this section applies, the undertaker must in accordance with a section 66D agreement take such steps – | |
| | (a) for the purpose of connecting the premises in question with the undertaker's supply system, or | 20 |
| | (b) in respect of that system, | |
| | as may be provided for in that agreement in order to enable the requested use of the undertaker's supply system. | |
| (4) | If water is or is to be taken from the undertaker's supply system and conveyed to any of the premises in question by means of retail infrastructure, subsection (3)(a) is to be disregarded as regards premises that are or are to be so supplied. | 25 |
| (5) | A water undertaker is not required by this section to permit the use of its supply system, or to take any steps to enable its use, if the first, second or third ground applies. | 30 |
| (6) | The first ground is that – | |
| | (a) in the case of a request under subsection (1), the water supply licensee has not secured by means of – | |
| | (i) a request under section 66AA(1) made by the licensee, | 35 |
| | (ii) a request under section 66B(1) or 66C(1), (2) or (3) made by the licensee or another water supply licensee, or | |
| | (iii) a combination of such requests, | |
| | a supply of water, or the introduction of a supply of water, in connection with which the premises in question are to be supplied; | 40 |
| | (b) in the case of a request under subsection (2), the water supply licensee has not secured by means of – | |
| | (i) a request under section 66AA(2), 66B(2) or (3) or 66C(4), or | 45 |

- (ii) a combination of such requests,
a supply of water, or the introduction of a supply of water, in
connection with which the premises in question are to be
supplied.
- (7) The second ground is that there is in relation to the water fittings 5
used or to be used in connection with –
(a) the supply of water to the premises in question, or
(b) the use of water in those premises,
a contravention of such of the requirements of regulations under
section 74 as are prescribed for the purposes of this subsection. 10
- (8) The third ground is that, in a case where water is or is to be conveyed
to any of the premises in question by means of retail infrastructure,
no water supply licensee has secured, by means of a request under
section 66CA, that retail infrastructure may be so used.
- (9) Where – 15
(a) a request has been made by a water supply licensee for the
purposes of subsection (1) or (2), and
(b) the steps which the undertaker is required to take by virtue
of that request include steps for the purpose of obtaining any
necessary authority for, or agreement to, any exercise by it of 20
any of its powers or the carrying out by it of any works,
the failure of the undertaker to acquire the necessary authority or
agreement does not affect the liability of the licensee to reimburse the
undertaker in respect of some or all of expenses incurred by it in
taking those steps, if the terms and conditions of the section 66D 25
agreement provide for such liability as regards those steps.
- (10) In this section and sections 66AA to 66CB –
(a) “prescribed” means, in relation to a water undertaker whose
area is wholly or mainly in Wales, prescribed by regulations 30
made by the Welsh Ministers by statutory instrument, which
is subject to annulment in pursuance of a resolution of the
Assembly;
(b) a reference to the supply system of a water undertaker is to
be construed in accordance with section 17B;
(c) references to a retail authorisation, a restricted retail 35
authorisation or retail infrastructure are to be construed in
accordance with Schedule 2A.

66AA Water supply from water undertaker

- (1) This section applies where a water supply licensee with a retail
authorisation (“L”) requests a water undertaker to provide L with a
supply of water for the purpose of supplying water to premises 40
that –
(a) L is to supply in accordance with L’s retail authorisation, and
(b) are in the area of the undertaker.
- (2) This section also applies where a water supply licensee with a
restricted retail authorisation (“R”) requests a water undertaker to
provide R with a supply of water for the purpose of supplying water
to premises that – 45

- (a) R is to supply in accordance with R's restricted retail authorisation, and
- (b) are in the area of the undertaker.
- (3) Where this section applies, the undertaker must in accordance with a section 66D agreement – 5
- (a) take such steps in respect of the undertaker's supply system as may be provided for in that agreement in order to enable the use of the undertaker's supply system for the purpose in subsection (1) or, as the case may be, subsection (2), and
- (b) having taken such steps, provide the requested supply of water. 10
- (4) A water undertaker is not required by this section to provide a supply of water if both of the first and second grounds apply.
- (5) The first ground is that – 15
- (a) the premises to be supplied by L or, as the case may be, R do not consist in the whole or any part of a building, or
- (b) the supply to be made by L or, as the case may be, R to those premises is for purposes other than domestic purposes.
- (6) The second ground is that provision of a supply of water by the water undertaker would – 20
- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or 25
- (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (7) Where – 30
- (a) a request has been made by a water supply licensee for the purposes of subsection (1) or (2), and
- (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works, 35
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of expenses incurred by it in taking those steps, if the terms and conditions of the section 66D agreement provide for such liability as regards those steps. 40

66B Introduction of water into water undertaker's supply system

- (1) This section applies where –
- (a) a water supply licensee with a wholesale authorisation ("L") requests a water undertaker to permit L to introduce water into the undertaker's supply system, with a view to the use of that system, in connection with that introduction of water, to supply water to particular premises in accordance with a retail authorisation (whether L's or another's), and 45

- (b) the premises in issue are in the area of the undertaker.
- (2) This section also applies where –
 - (a) a water supply licensee with a supplementary authorisation (“R1”) requests a water undertaker to permit R1 to introduce water into the undertaker’s supply system, with a view to the use of that system, in connection with that introduction of water, to supply water to particular premises in accordance with R1’s restricted retail authorisation, and 5
 - (b) the premises in issue are in the area of the undertaker.
- (3) This section also applies where – 10
 - (a) a water undertaker agrees to permit a water supply licensee with a supplementary authorisation (“R2”) to introduce water into the undertaker’s treatment works,
 - (b) in connection with that introduction, R2 requests the undertaker to permit R2 to introduce water into the undertaker’s supply system, with a view to the use of that system to supply water to particular premises in accordance with R2’s restricted retail authorisation, and 15
 - (c) the premises in issue are in the area of the undertaker.
- (4) Where this section applies, the undertaker must in accordance with a section 66D agreement – 20
 - (a) in a case falling within subsection (1), take such steps –
 - (i) for the purpose of connecting L’s source of water with the undertaker’s supply system, or
 - (ii) in respect of the undertaker’s supply system, 25
as may be provided for in that agreement in order to enable L to make the requested introduction of water into the supply system;
 - (b) in a case falling within subsection (2), take such steps –
 - (i) for the purpose of connecting R1’s treatment works with the undertaker’s supply system, 30
 - (ii) for the purpose of connecting with the undertaker’s supply system any source used by R1 for the purpose of supplying water other than for domestic or food purposes, or 35
 - (iii) in respect of the undertaker’s supply system, as may be provided for in that agreement in order to enable R1 to make the requested introduction of water into the supply system;
 - (c) in a case falling within subsection (3), take such steps in respect of the undertaker’s supply system as may be provided for in that agreement in order to enable R2 to make the requested introduction of water into the supply system; 40
 - (d) having taken steps under paragraph (a), (b) or (c) (as the case may be), permit the requested introduction of water into that supply system. 45
- (5) A water undertaker is not required by this section to permit the introduction of water into its supply system, or to take any steps to enable such an introduction of water, if permitting the introduction of water into the undertaker’s supply system would – 50

- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or 5
- (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (6) Where—
- (a) a request has been made by a water supply licensee for the purposes of subsection (1), (2) or (3), and 10
- (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works, 15
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of expenses incurred by it in taking those steps, if the terms and conditions of the section 66D agreement provide for such liability as regards those steps. 20
- (7) In this section “treatment works” means—
- (a) in relation to a water undertaker whose area is wholly or mainly in Wales, the works designated as treatment works by the Secretary of State for the purposes of section 17B(6);
- (b) in relation to a water supply licensee, the works designated from time to time by the Welsh Ministers as treatment works for the purposes of this paragraph. 25
- (8) A list of any works designated for the purposes of subsection (7)(b) must be published from time to time by the Welsh Ministers in such manner as the Welsh Ministers consider appropriate for the purpose of bringing the designations to the attention of persons likely to be affected by them. 30
- (9) A pipe laid because of subsection (4)(a)(i) or (b)(i) or (ii) is to be regarded as a water main for the purposes of this Act, subject to any provision to the contrary. 35
- (10) In this section and section 66C—
- (a) a reference to a wholesale authorisation is to be construed in accordance with Schedule 2A;
- (b) a reference to a supplementary authorisation is to be construed in accordance with Schedule 2A. 40

66C Introduction of water provided by secondary water undertaker

- (1) This section applies where a water supply licensee with a wholesale authorisation (“L1”)—
- (a) requests a water undertaker other than L1’s primary water undertaker (the “secondary water undertaker”) to provide a supply of water so that water may be supplied to particular premises, using the primary water undertaker’s supply system and in accordance with a retail authorisation (whether L1’s or another’s), and 45

- (b) requests L1’s primary water undertaker to permit L1 to introduce that water into the primary water undertaker’s supply system,
and the premises in issue are in the area of the primary water undertaker. 5
A request under paragraph (a) may only be made to a water undertaker whose area is wholly or mainly in England.
- (2) This section also applies where a water supply licensee with a wholesale authorisation (“L2”) – 10
(a) requests a water undertaker other than L2’s primary water undertaker (the “secondary water undertaker”) to provide a supply of water so that L2 may supply water to particular premises, using the primary water undertaker’s supply system and in accordance with L2’s retail authorisation so far as that authorisation relates to L2’s customers, and 15
(b) requests L2’s primary water undertaker to permit L2 to introduce that water into the primary water undertaker’s supply system,
and the premises in issue are in the area of the primary water undertaker. 20
A request under paragraph (a) may only be made to a water undertaker whose area is wholly or mainly in Wales.
- (3) This section also applies where a water supply licensee with a wholesale authorisation (“L3”) – 25
(a) agrees with a water undertaker whose area is wholly or mainly in Wales (the “secondary water undertaker”) for the secondary water undertaker to provide a supply of water so that water may be supplied to particular premises, using the primary water undertaker’s supply system and in accordance with – 30
(i) L3’s retail authorisation except so far as that authorisation relates to L3’s customers, or
(ii) a retail authorisation other than L3’s, and
(b) requests L3’s primary water undertaker to permit L3 to introduce that water into the primary water undertaker’s supply system, 35
and the premises in issue are in the area of the primary water undertaker.
- (4) This section also applies where a water supply licensee with a supplementary authorisation (“R”) – 40
(a) requests a water undertaker other than R’s primary water undertaker (the “secondary water undertaker”) to provide a supply of water so that R may supply water to particular premises, using the primary water undertaker’s supply system and in accordance with R’s restricted retail authorisation, and 45
(b) requests R’s primary water undertaker to permit R to introduce that water into the primary water undertaker’s supply system,
and the premises in issue are in the area of the primary water undertaker. 50

- A request under paragraph (a) may be made to a water undertaker whose area is wholly or mainly in England or Wales.
- (5) Where this section applies by virtue of subsection (1), (2) or (4), the secondary water undertaker must in accordance with a section 66D agreement – 5
- (a) take such steps in respect of its supply system as may be provided for in that agreement in order to enable it to provide the requested supply, and
 - (b) having taken such steps, provide that supply.
- (6) Where this section applies, the primary water undertaker must in accordance with a section 66D agreement – 10
- (a) take such steps –
 - (i) for the purpose of connecting the secondary water undertaker's supply system with the primary water undertaker's supply system, or 15
 - (ii) in respect of its supply system, as may be provided for in that agreement in order to enable L1, L2, L3 or R to make the requested introduction of water into the primary undertaker's supply system, and
 - (b) having taken such steps, permit the requested introduction. 20
- (7) A secondary water undertaker is not required by this section to provide a supply of water to L1, L2 or R if providing the supply of water would –
- (a) require the secondary undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or 25
 - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a). 30
- (8) A primary water undertaker is not required by this section to permit the introduction of water into its supply system, or to take any steps to enable such an introduction of water, if permitting the introduction of a supply of water would – 35
- (a) require the primary undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or 40
 - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
- (9) Where – 45
- (a) a request has been made by a water supply licensee to a water undertaker for the purposes of subsection (1), (2), (3) or (4), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any

necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works, the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of expenses incurred by it in taking those steps, if the terms and conditions of the section 66D agreement provide for such liability as regards those steps. 5

(10) A pipe laid because of subsection (6)(a)(i) is to be regarded as a water main for the purposes of this Act, subject to any provision to the contrary. 10

(11) For the purposes of this section, a water undertaker is the primary water undertaker of a water supply licensee if the undertaker’s supply system is to be used for the purpose of making the supply to the premises mentioned in subsection (1), (2), (3) or (4).

66CA Retail infrastructure connections to undertaker’s supply system 15

(1) This section applies where –
(a) a water supply licensee with a retail infrastructure authorisation (“L”) requests a water undertaker to permit L to take water from the undertaker’s supply system, so that, after being conveyed by means of L’s retail infrastructure, the water may be supplied to particular premises in accordance with a retail authorisation (whether L’s or another’s), and 20
(b) the premises in issue are in the area of the undertaker.

(2) Where this section applies, the undertaker must in accordance with a section 66D agreement – 25
(a) take such steps –
(i) for the purpose of connecting L’s retail infrastructure with the undertaker’s supply system, or
(ii) in respect of that supply system, 30
as may be provided for in that agreement in order to enable L to take water as requested, and
(b) having taken those steps, permit that requested taking of water.

(3) A water undertaker is not required by this section to permit water to be taken from its supply system, or to take any steps to enable such taking, if the first or the second ground applies. 35

(4) The first ground is that permitting water to be taken as requested would –
(a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or 40
(b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a). 45

(5) The second ground is that there is as regards the retail infrastructure used or to be used in connection with the supply of water to the

premises in question a contravention of such of the requirements of section 74 as are prescribed for the purposes of this subsection.

- (6) Where –
- (a) a request has been made by a water supply licensee to a water undertaker for the purposes of subsection (1), and 5
 - (b) the steps that the undertaker is required to take because of the request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works, 10
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of expenses incurred by it in taking those steps, if the terms and conditions of the section 66D agreement provide for such liability as regards those steps.
- (7) A pipe laid because of subsection (2)(a)(i) is to be regarded as a water main for the purposes of this Act, subject to any provision to the contrary. 15
- (8) A reference in this section to a retail infrastructure authorisation is to be construed in accordance with Schedule 2A. 20

66CB Network infrastructure connections to undertaker's supply system 20

- (1) This section applies where –
- (a) a water supply licensee with a network infrastructure authorisation (“L”) requests a water undertaker to permit L –
 - (i) to take water from the undertaker's supply system into L's network infrastructure, and 25
 - (ii) at a separate point in that system, to introduce that or other water from that infrastructure into that supply system, 30

in circumstances where that taking and introduction would be done in connection with supplying water to particular premises in accordance with a retail authorisation (whether L's or another's), and 30
 - (b) the premises in issue are in the area of the undertaker.
- (2) Where this section applies, the undertaker must in accordance with a section 66D agreement – 35
- (a) take such steps –
 - (i) for the purpose of connecting L's network infrastructure with the undertaker's supply system, or 40
 - (ii) in respect of that supply system, as may be provided for in that agreement in order to enable L to take and introduce water as requested, and 40
 - (b) having taken those steps, permit that requested taking and introduction of water.
- (3) A water undertaker is not required by this section to permit water to be taken from its supply system and to be introduced into it, or to take any steps to enable such taking and introduction, if permitting water to be taken and introduced as requested would – 45

- (a) require the undertaker, in order to meet all its existing obligations to supply water for domestic or other purposes, together with its probable future obligations to supply buildings and parts of buildings with water for domestic purposes, to incur unreasonable expenditure in carrying out works, or 5
 - (b) otherwise put at risk its ability to meet any of the existing or probable future obligations mentioned in paragraph (a).
 - (4) Where –
 - (a) a request has been made by a water supply licensee to a water undertaker for the purposes of subsection (1), and 10
 - (b) the steps that the undertaker is required to take because of the request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers or the carrying out by it of any works, 15

the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of expenses incurred by it in taking those steps, if the terms and conditions of the section 66D agreement provide for such liability as regards those steps. 20
 - (5) A pipe laid because of subsection (2)(a)(i) is to be regarded as a water main for the purposes of this Act, subject to any provision to the contrary.
 - (6) References in this section to a network infrastructure authorisation or network infrastructure are to be construed in accordance with Schedule 2A.” 25
- 2 After section 66CB (inserted by paragraph 1) there is inserted –
- “66CC Determinations by Authority**
- (1) The Authority may determine, in a case referred to it by a water supply licensee, whether any condition specified in the following provisions is satisfied – 30
 - (a) section 66A(6) to (8);
 - (b) section 66AA(5) and (6);
 - (c) section 66B(5);
 - (d) section 66C(7) and (8); 35
 - (e) section 66CA(4) and (5).
 - (2) Before the Authority determines whether a condition specified in section 66B(5) or 66CA(4) is satisfied, it must consult the Secretary of State.
 - (3) If a determination as to a condition specified in section 66B(5) relates to the introduction of water into the supply system of a water undertaker whose area is wholly or mainly in Wales, the Authority must consult the Welsh Ministers, not the Secretary of State. 40
 - (4) Before the Authority determines whether a condition specified in section 66C(7) or (8) is satisfied, it must consult the Secretary of State and the Environment Agency. 45

- (5) If the case in which a determination as to a condition specified in section 66C(7) or (8) is made relates to –
- (a) the supply of water by a water undertaker whose area is wholly or mainly in Wales, and
 - (b) the introduction of water into the supply system of a water undertaker whose area is wholly or mainly in Wales,
- the Authority must consult the Welsh Ministers, not the Secretary of State. 5
- (6) If the case in which a determination as to a condition specified in section 66C(7) or (8) is made relates to the supply of water by one water undertaker, and the introduction of water into the supply system of another water undertaker, and only one of those undertakers has an area wholly or mainly in Wales, the Authority must consult the Welsh Ministers as well as the Secretary of State.” 10
- 3 For section 66D of the Water Industry Act 1991 (determinations and agreements) there is substituted – 15
- “66D Agreements as to duties under sections 66A to 66CB**
- (1) On the application of –
- (a) a water supply licensee that has made a request under sections 66A to 66CB, or 20
 - (b) a water undertaker to which such a request has been made, the Authority may by order require a water undertaker to perform the duty in question under sections 66A to 66CB, for such period and on such terms and conditions as may be specified in the order.
- (2) The Authority may make an order under subsection (1) only if – 25
- (a) in the case of an application relating to a duty under section 66A, 66AA, 66B, 66C, 66CA or 66CB, it appears to the Authority that the water undertaker is required to perform that duty under that section, or
 - (b) in the case of an application relating to duties under section 66C, it appears to the Authority that both water undertakers in question are required to perform duties under that section, and it is satisfied that the parties cannot reach agreement. 30
- (3) An order under subsection (1) has effect as an agreement between – 35
- (a) the water supply licensee, and
 - (b) the water undertaker required to perform the duty in question.
- (4) On the application of a party to a section 66D agreement, the Authority may, if it is satisfied that the parties cannot reach agreement on the variation or termination of the agreement, by order vary or terminate the agreement. 40
- (5) If an order under subsection (4) is made in relation to a section 66D agreement, the agreement –
- (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect, as the case may be. 45
- (6) An order under subsection (4) may require one party to the agreement to pay compensation to the other.

- (7) Neither the OFT nor the Authority may exercise, in respect of an agreement for the performance of a duty under sections 66A to 66CB by a water undertaker, the powers conferred by –
- (a) section 32 of the Competition Act 1998 (directions in relation to agreements); 5
 - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct –
- (a) which is connected with an agreement for the performance of a duty under sections 66A to 66CB by a water undertaker, and 10
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act. 15
- (9) In this Chapter a reference to a section 66D agreement is a reference to –
- (a) an agreement for the performance of a duty under sections 66A to 66CB by a water undertaker, or
 - (b) an order deemed to be such an agreement under subsection (3), or 20
 - (c) an agreement varied by order under subsection (4).”
- 4 After section 66D of the Water Industry Act 1991 (as substituted by paragraph 3) there is inserted –
- “66DA Codes relating to duties under sections 66A to 66CB** 25
- (1) The Authority may issue one or more codes in respect of section 66D agreements.
 - (2) A code may set out –
 - (a) a procedure for negotiating a section 66D agreement;
 - (b) a procedure for negotiating an agreement to vary or terminate a section 66D agreement. 30
 - (3) A code may set out –
 - (a) terms and conditions to be incorporated into a section 66D agreement;
 - (b) principles for determining the terms and conditions that should or should not be incorporated into a section 66D agreement. 35
 - (4) The terms and conditions that may be incorporated into a section 66D agreement may include terms and conditions as to –
 - (a) the duration of the agreement; 40
 - (b) the use of a water supply licensee’s retail or network infrastructure by a water undertaker or another water supply licensee.
 - (5) A code may set out the steps to be taken by the Authority in determining for the purposes of section 66D(2) whether a water undertaker is, in the particular case, required to perform a duty under sections 66A to 66CB. 45

- (6) If the Authority considers that a water undertaker or a water supply licensee is not acting as required by a code, the Authority may give the undertaker or the licensee a direction to do, or not to do, a thing specified in the direction.
- (7) It is the duty of a water undertaker or a water supply licensee to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18. 5
- (8) The Authority may issue codes that apply –
- (a) generally,
 - (b) to a specified person or description of person; 10
 - (c) in relation to a specified duty or duties under sections 66A to 66CB.

66DB Codes: procedure

- (1) The Authority must prepare a draft of any code under section 66DA.
- (2) If the draft code relates to section 66D agreements made with water undertakers whose areas are wholly or mainly in England, the Authority must consult the following about the draft code –
- (a) the Secretary of State;
 - (b) the Chief Inspector of Drinking Water;
 - (c) the Council; 20
 - (d) any water undertakers likely to be affected by the code;
 - (e) any water supply licensees likely to be affected by the code;
 - (f) such other persons as the Authority thinks appropriate.
- (3) If the draft code relates to section 66D agreements made with water undertakers whose areas are wholly or mainly in Wales, the Authority must consult the following about the draft code –
- (a) the Welsh Ministers;
 - (b) the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) applies; 30
 - (c) the Council;
 - (d) any water undertakers likely to be affected by the code;
 - (e) any water supply licensees likely to be affected by the code;
 - (f) such other persons as the Authority thinks appropriate.
- (4) The Authority must specify the period (“the consultation period”) within which a person may make representations about the draft code. 35
- (5) Before a code prepared by the Authority is issued, the Secretary of State may direct the Authority –
- (a) not to issue the code, or 40
 - (b) to issue the code with specified modifications.
- The Secretary of State may not give a direction in relation to a code if or to the extent that the Welsh Ministers may give a direction in relation to the code under subsection (6).
- (6) Before a code prepared by the Authority is issued, the Welsh Ministers may direct the Authority – 45

- (a) not to issue the code, or
- (b) to issue the code with specified modifications.

The Welsh Ministers may give a direction in relation to a code only if, or only to the extent that, the code relates to section 66D agreements made with one or more water undertakers, which or each of which is a water undertaker whose area is wholly or mainly in Wales.

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- (7) A direction under subsection (5) or (6) must be given within the period of 28 days beginning with the day after the end of the consultation period.

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66DC Codes: revision

- (1) The Authority may revise a code issued under section 66DA.
- (2) Sections 66DA and 66DB apply to a revision as they apply to an original code.
- (3) A revised code may include provision for applying any of its revisions to section 66D agreements made before the revised code comes into effect.”

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5 For section 66E of that Act there is substituted –

“66E Rules about charges

- (1) The Authority must issue rules about charges that may be imposed by a water undertaker under a section 66D agreement.
- (2) The rules may in particular specify –
 - (a) what types of charges may be imposed;
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;
 - (c) principles for determining what types of charges may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed.
- (3) The Secretary of State and the Welsh Ministers acting jointly may issue guidance as to the content of rules under this section.
- (4) The Secretary of State and the Welsh Ministers must –
 - (a) prepare a draft of any proposed guidance and consult the Authority and the relevant persons about the draft;
 - (b) lay a copy of the guidance before both Houses of Parliament and the Assembly;
 - (c) publish the guidance.
- (5) The Authority must have regard to the guidance in making rules under this section.
- (6) The Authority must –
 - (a) prepare a draft of any proposed rules, and
 - (b) consult the Secretary of State, the Welsh Ministers and the relevant persons about the draft.

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- (7) The relevant persons are –
- (a) the Council;
 - (b) any water undertakers likely to be affected by the guidance or the rules;
 - (c) any water supply licensees likely to be affected by the guidance or the rules; 5
 - (d) such other persons as the person who is consulting thinks appropriate.
- (8) The rules may make provision which applies – 10
- (a) generally,
 - (b) to a specified person or description of person;
 - (c) in relation to a specified duty or duties under sections 66A to 66CB.
- (9) If the Authority considers that a water undertaker is not acting as required by rules under this section, the Authority may – 15
- (a) give the undertaker a direction to do, or not to do, a thing specified in the direction, or
 - (b) in a case where a section 66D agreement to which the undertaker is party requires modification in order to conform to the rules, give a direction to the undertaker and the water supply licensee in question to modify the agreement. 20
- (10) It is the duty of a water undertaker or a water supply licensee to comply with a direction under subsection (9), and this duty is enforceable by the Authority under section 18.
- (11) The Authority may revise rules under this section. 25
- (12) This section applies to a revision as it applies to the original rules made under this section.
- (13) Revised rules may include provision for applying any of the revisions to section 66D agreements made before the revised rules come into effect. 30

66EA Reduction of charges in particular cases

- (1) A person who is party to a section 66D agreement, or who is proposing to enter an agreement that would if made be a section 66D agreement, may apply to the Authority for rules under section 66E to be varied so as to enable a reduction in charges payable for a supply of water under the agreement or proposed agreement. 35
- (2) An application under subsection (1) may only be made if the water supply licence in question gives the holder of the licence a retail authorisation or a restricted retail authorisation.
- (3) The Authority may grant the application if it is satisfied that – 40
- (a) a reduction in the charges that would otherwise apply is justified by steps to reduce or manage water consumption that are taken or proposed to be taken by a person (who need not be a party to the agreement in question) in respect of relevant premises, and 45
 - (b) it is otherwise reasonable to reduce charges imposed in the particular case.

- (4) Relevant premises are premises that are or would be supplied with water by reference to the supply of water to which the section 66D agreement relates.
 - (5) If the Authority grants the application, it must specify how rules under section 66E are to be varied. 5
 - (6) The Authority may make the application of some or all of the variations subject to compliance with conditions.
 - (7) The conditions may be directed to any party to the section 66D agreement.
 - (8) The conditions may in particular be designed so as to secure a reduction in the charges payable by a person whose steps are relied on to satisfy the requirement in subsection (3)(a). 10
 - (9) The Secretary of State and the Welsh Ministers acting jointly may issue guidance about varying rules under this section.
 - (10) The Secretary of State and the Welsh Ministers must – 15
 - (a) prepare a draft of any proposed guidance and consult the Authority and the relevant persons about the draft;
 - (b) lay a copy of the guidance before both Houses of Parliament and the Assembly;
 - (c) publish the guidance. 20
 - (11) The relevant persons are –
 - (a) the Council;
 - (b) any water undertakers likely to be affected by the guidance or the rules;
 - (c) any water supply licensees likely to be affected by the guidance or the rules; 25
 - (d) such other persons as the persons who are consulting think appropriate.
 - (12) The Authority must have regard to the guidance in exercising its functions under this section.” 30
- 6 Section 66F (section 66D: supplementary) is repealed.
- 7 (1) Section 66G (designation of strategic supply) is amended as follows.
- (2) In subsection (1), for “an agreement under section 66D above” there is substituted “a section 66D agreement”.
 - (3) In subsection (4)(d), for “the agreement under section 66D above” there is substituted “the section 66D agreement”. 35
 - (4) In subsection (10) –
 - (a) for “section 66A” there is substituted “section 66AA”;
 - (b) for “customers of the licensed water supplier in question” there is substituted “relevant customers of a water supply licensee”. 40
 - (5) After subsection (10) there is inserted –

“(11) A person is a relevant customer of a water supply licensee if the introduction of water in question is made by reference to the supply of water to that person’s premises in accordance with a retail

- authorisation (whether that retail authorisation is an authorisation of the licensee requesting the introduction of water or another water supply licensee's authorisation) or a restricted retail authorisation of the licensee requesting the introduction of water."
- 8 (1) Section 66H (designation of collective strategic supply) is amended as follows. 5
- (2) In subsection (1)(b), for "agreements under section 66D above" there is substituted "section 66D agreements".
- (3) In subsection (4)(d), for "the agreements under section 66D above" there is substituted "the section 66D agreements". 10
- (4) In subsection (10) –
- (a) for "section 66A" there is substituted "section 66AA";
- (b) for "the customers of the licensed water supplier in question" there is substituted "relevant customers of a water supply licensee".
- (5) After subsection (10) there is inserted – 15
- "(11) A person is a relevant customer of a water supply licensee if an introduction of water is made by reference to the supply of water to that person's premises in accordance with a retail authorisation (whether that retail authorisation is an authorisation of the licensee requesting the introduction of water or another water supply licensee's authorisation) or a restricted retail authorisation of the licensee requesting the introduction of water." 20
- 9 (1) Section 66I (prohibition on unauthorised use of supply system) is amended as follows.
- (2) In subsection (1), for "of a customer" there is substituted "of – 25
- (a) a customer,
- (a) the person so using that system, or
- (a) a person associated with that person".
- (3) In subsection (2)(b) –
- (a) for "licensed water supplier" there is substituted "water supply licensee"; 30
- (b) for "its licence" there is substituted "the licensee's licence".
- (4) After subsection (8), there is inserted –
- "(8A) For the purposes of this section, a person (A) is associated with another person (B) if they would be associated with each other for the purposes of Schedule 2A if A were a water supply licensee." 35
- (5) In subsection (9), for "section 17B(5) above" there is substituted "section 17B".
- 10 (1) Section 66J (prohibition on unauthorised introduction of water) is amended as follows. 40
- (2) In subsection (1), for the words from "no person" to the end there is substituted "no person other than the water undertaker may –
- (a) introduce water into a water undertaker's supply system,

- (b) take water from a water undertaker’s supply system for purpose of supplying particular premises, or
 - (c) take water from a water undertaker’s supply system and convey it to a different point in that system for the purpose of introducing it at that point.” 5
- (3) In subsection (2) –
- (a) the words “the water is introduced” are repealed;
 - (b) for paragraph (a) (including the “or” following it), there is substituted –
 - “(a) the water is introduced, taken or conveyed by a water supply licensee in pursuance of the licensee’s licence, or,”; 10
 - (c) in paragraph (b), at the beginning there is inserted “the water is introduced”.

SCHEDULE 3

Section 4 15

SEWERAGE LICENCES: AUTHORISATIONS

“SCHEDULE 2B

SEWERAGE LICENCES: AUTHORISATIONS

Retail authorisation

- 1 A retail authorisation given by a sewerage licence is an authorisation to the sewerage licensee to use the sewerage system of a sewerage undertaker for the purpose of taking away matter discharged from the premises of –
 - (a) the licence holder,
 - (b) persons associated with the licence holder, or
 - (c) the licence holder’s customers. 25
- 2 None of the premises served by a sewerage licensee under a retail authorisation may be household premises (as defined in section 17C).
- 3 The requirement in paragraph 2 is enforceable by the Authority under section 18.
- 4 The Authority may, with the approval of the Secretary of State, issue guidance as to the factors which are, or are not, to be taken into account in determining the extent of any premises for the purposes of paragraph 2. 30

Wholesale authorisation

- 5 A wholesale authorisation given by a sewerage licence is an authorisation to the sewerage licensee to remove matter from the sewerage system of a sewerage undertaker –
 - (a) where the sewerage system is being used in accordance with a retail authorisation (whether the licensee’s or another sewerage licensee’s) for taking away matter discharged from particular premises, and
 - (b) the removing of matter from the sewerage system is done in connection with the matter discharged from those premises. 40

Retail infrastructure authorisation

- 6 A retail infrastructure authorisation given by a sewerage licence is an authorisation to the sewerage licensee –
- (a) to take matter discharged from particular premises into the licensee’s retail infrastructure, and 5
 - (b) after conveying it by means of that retail infrastructure, to discharge it into a sewerage undertaker’s sewerage system,
- in circumstances where the sewerage system is being used in accordance with a retail authorisation (whether the licensee’s or another sewerage licensee’s) for taking away matter discharged from the premises. 10

Network infrastructure authorisation

- 7 A network infrastructure authorisation given by a sewerage licence is an authorisation to the sewerage licensee –
- (a) to remove matter from the sewerage system of a sewerage undertaker into the licensee’s network infrastructure, and 15
 - (b) at a separate point in the sewerage system, to discharge that or other matter from the licensee’s network infrastructure into the sewerage system,
- in the circumstances described in paragraph 8.
- 8 The circumstances are that the sewerage system is being used in accordance with a retail authorisation (whether the licensee’s or another sewerage licensee’s) for taking away matter discharged from particular premises and – 20
- (a) the removing of matter mentioned in paragraph 7(a), and
 - (b) the discharging of matter mentioned in paragraph 7(b), 25
- are done in connection with the matter discharged from those premises.

Disposal authorisation

- 9 A disposal authorisation given by a sewerage licence is an authorisation to the sewerage licensee to remove matter from the sewerage system of a sewerage undertaker. 30
- 10 If a sewerage licensee with a disposal authorisation has, or a person associated with the licensee has, a retail authorisation –
- (a) the licensee or the person associated with it, or both of them, must obtain a wholesale authorisation, and
 - (b) neither the licensee nor the person associated with it (if that person has a disposal authorisation) may remove matter from a sewerage system in accordance with the disposal authorisation (or either disposal authorisation, if both have such an authorisation) while matter may be removed in accordance with the wholesale authorisation (or either wholesale authorisation, if both have such an authorisation). 35 40

Interpretation

- 11 For the purposes of this Schedule, a person (A) is associated with a sewerage licensee (L) if –

- (a) where A and L are bodies corporate, one of them is a subsidiary of the other or both are subsidiaries of the same body corporate;
 - (b) where A or L is an individual or an unincorporated association and the other is a body corporate, that individual or unincorporated association controls the other or a body corporate of which the other is a subsidiary; 5
 - (c) A is a partnership of which L is a member.
- 12 In paragraph 11 “subsidiary” has the meaning given by section 1159 of the Companies Act 2006; and sections 450(1) to (4) and 451(1) to (3) of the Corporation Taxes Act 2010 (control of a company) apply for the purposes of paragraph 11 as they apply for the purposes of Part 10 of that Act. 10
- 13 A reference in this Chapter to the retail infrastructure of a sewerage licensee is a reference to any sewer, drain, structure, installation or apparatus vesting in or belonging to the licensee that is used in connection with—
- (a) conveying matter discharged from particular premises, and 15
 - (b) discharging it into a sewerage undertaker’s sewerage system.
- 14 A reference in this Chapter to the network infrastructure of a sewerage licensee is a reference to any sewer, drain, structure, installation or apparatus vesting in or belonging to the licensee that is used in connection with— 20
- (a) removing matter from a sewerage undertaker’s sewerage system, and
 - (b) at separate point in that system, discharging that or other matter into that system.”

SCHEDULE 4

Section 4 25

SEWERAGE UNDERTAKERS’ DUTIES AS REGARDS SEWERAGE LICENSEES

After Chapter 2 of Part 4 of the Water Industry Act 1991 there is inserted—

“CHAPTER 2A

DUTIES RELATING TO SEWERAGE SERVICES: SEWERAGE LICENSEES

Duties of sewerage undertakers as regards enabling the provision of sewerage services 30

117A Use of undertaker’s sewerage system

- (1) This section applies where a sewerage licensee with a retail authorisation (“L”) requests a sewerage undertaker to permit the use of the undertaker’s sewerage system for the purpose of taking away matter discharged from premises that— 35
 - (a) L is to serve in accordance with L’s retail authorisation, and
 - (b) are in the area of the sewerage undertaker.
- (2) Where this section applies, the undertaker must in accordance with a section 117G agreement take such steps— 40

- (a) for the purpose of connecting the drains or sewers of the premises in question to the undertaker's sewerage system, or
 (b) in respect of that system,
 as may be provided for in that agreement in order to enable the requested use of that system. 5
- (3) If matter discharged from premises is or is to be conveyed to the undertaker's sewerage system by means of a sewerage licensee's retail infrastructure, subsection (2)(a) is to be disregarded as regards premises that are or are to be connected by such infrastructure to that system. 10
- (4) A sewerage undertaker is not required by this section to permit the use of its sewerage system, or to take any steps to enable its use, if the sewerage licensee making a request has not secured by means of –
 (a) a request under section 117B made by the licensee, or
 (b) a request under section 117C made by the licensee or another sewerage licensee, 15
 that there is to be provision for removing matter from the sewerage system in quantities referable to the matter to be discharged from the premises in question.
- (5) Where – 20
 (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and
 (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers of the carrying out by it of any works, 25
 the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117G agreement provides for such liability as regards those steps. 30
- (6) In this section and sections 117B to 117E –
 (a) references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(8);
 (b) references to a retail authorisation and the retail infrastructure of a sewerage licensee are to be construed in accordance with Schedule 2B. 35

117B Sewerage services from sewerage undertaker

- (1) This section applies where a sewerage licensee with a retail authorisation ("L") requests a sewerage undertaker to deal effectually with matter in its sewerage system – 40
 (a) where the quantities to be dealt with are referable to the matter discharged from particular premises into the system in accordance with L's retail authorisation, and
 (b) where the premises in issue are in the area of the undertaker. 45
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117G agreement –

- (a) take such steps in respect of the undertaker’s sewerage system as may be provided for in that agreement in order to enable the use of that system for the purpose in subsection (1), and
 - (b) having taken those steps, deal with matter as requested. 5
- (3) Where –
- (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers of the carrying out by it of any works, 10
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117G agreement provides for such liability as regards those steps. 15

117C Removal of matter from sewerage system by a sewerage licensee

- (1) This section applies where a sewerage licensee with a wholesale authorisation (“L”) requests a sewerage undertaker to permit L to remove matter from the undertaker’s sewerage system – 20
- (a) where the quantities to be removed are referable to the matter discharged from particular premises into the system in accordance with a retail authorisation (whether L’s or another’s), and 25
 - (b) the premises in issue are in the area of the undertaker.
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117G agreement –
- (a) take such steps, including steps in respect of the undertaker’s sewerage system, as may be provided for in that agreement in order to enable L to remove matter from the undertaker’s sewerage system as requested, and 30
 - (b) having taken those steps, to permit that requested removal of matter from that sewerage system.
- (3) Where – 35
- (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers of the carrying out by it of any works, 40
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117G agreement provides for such liability as regards those steps. 45
- (4) A pipe connecting a sewerage undertaker’s sewerage system to a sewage disposal works that is laid because of subsection (2)(a) is to

be regarded as a disposal main for the purposes of this Act, subject to any provision to the contrary.

- (5) In this section, a reference to a wholesale authorisation is to be construed in accordance with Schedule 2B.

117D Retail infrastructure connections to undertaker's sewerage system 5

- (1) This section applies where a sewerage licensee with a retail infrastructure authorisation ("L") requests a sewerage undertaker to permit L, having taken matter discharged from particular premises and conveyed it by means of L's retail infrastructure, to discharge it into the undertaker's sewerage system – 10
- (a) where the matter discharged from those premises is matter that may be discharged into the undertaker's sewerage system in accordance with a retail authorisation (whether L's or another's), and
- (b) the premises in issue are in the area of the undertaker. 15
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117G agreement –
- (a) take such steps –
- (i) for the purpose of connecting L's retail infrastructure with the undertaker's sewerage system, or 20
- (ii) in respect of that sewerage system, as may be provided for in that agreement in order to enable L to discharge matter as requested, and
- (b) having taken those steps, permit that requested discharging of matter. 25
- (3) Where –
- (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and
- (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers of the carrying out by it of any works, 30
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117G agreement provides for such liability as regards those steps. 35
- (4) A pipe laid because of subsection (2)(a)(i) is to be regarded as a public sewer for the purposes of this Act, subject to any provision to the contrary. 40
- (5) In this section, a reference to a retail infrastructure authorisation is to be construed in accordance with Schedule 2B.

117E Network infrastructure connections to undertaker's sewerage system

- (1) This section applies where a sewerage licensee with a network infrastructure authorisation ("L") requests a sewerage undertaker to permit L to remove matter from the undertaker's sewerage system into L's network infrastructure and, at a separate point in that 45

- system, to discharge that or other matter from that infrastructure into that system –
- (a) where the quantities to be removed and discharged are referable to the matter discharged into the sewerage system from particular premises in accordance with a retail authorisation (whether L’s or another’s), and 5
 - (b) where the premises in issue are in the area of the undertaker.
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117G agreement – 10
- (a) take such steps –
 - (i) for the purpose of connecting L’s network infrastructure with the undertaker’s sewerage system, or
 - (ii) in respect of that sewerage system, 15as may be provided for in that agreement in order to enable L to remove and discharge matter as requested, and
 - (b) having taken those steps, permit that requested removal and discharge of matter.
- (3) Where – 20
- (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and 20
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers of the carrying out by it of any works, 25
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117G agreement provides for such liability as regards those steps. 30
- (4) A pipe laid because of subsection (2)(a)(i) is to be regarded as a public sewer or, as the case may be, a disposal main for the purposes of this Act, subject to any provision to the contrary.
- (5) In this section, references to a network infrastructure authorisation and the network infrastructure of a sewerage licensee are to be construed in accordance with Schedule 2B. 35

117F Connections for the purposes of a disposal authorisation

- (1) This section applies where a sewerage licensee with a disposal authorisation (“L”) requests a sewerage undertaker to permit L to remove matter from the undertaker’s sewerage system. 40
- (2) Where this section applies, the sewerage undertaker must in accordance with a section 117G agreement –
- (a) take such steps, including steps in respect of the undertaker’s sewerage system, as may be provided for in that agreement in order to enable L to remove matter from the undertaker’s sewerage system as requested, and 45
 - (b) having taken those steps, to permit that requested removal of matter from that sewerage system.

- (3) Where—
- (a) a request has been made by a sewerage licensee for the purposes of subsection (1), and
 - (b) the steps which the undertaker is required to take by virtue of that request include steps for the purpose of obtaining any necessary authority for, or agreement to, any exercise by it of any of its powers of the carrying out by it of any works,
- the failure of the undertaker to acquire the necessary authority or agreement does not affect the liability of the licensee to reimburse the undertaker in respect of some or all of the expenses incurred by it in taking those steps, if the section 117G agreement provides for such liability as regards those steps. 5 10
- (4) A pipe connecting a sewerage undertaker's sewerage system to a sewage disposal works that is laid because of subsection (2)(a) is to be regarded as a disposal main for the purposes of this Act, subject to any provision to the contrary. 15
- (5) In this section, a reference to a disposal authorisation is to be construed in accordance with Schedule 2B.

117G Agreements as to duties under sections 117A to 117F

- (1) On the application of— 20
- (a) a sewerage licensee that has made a request under sections 117A to 117F, or
 - (b) a sewerage undertaker to which such a request has been made,
- the Authority may by order require a sewerage undertaker to perform the duty in question under sections 117A to 117F, for such period and on such terms and conditions as may be specified in the order. 25
- (2) The Authority may make an order under subsection (1) only if— 30
- (a) it appears to the Authority that the sewerage undertaker is required to perform the duty in question, and
 - (b) it is satisfied that the parties cannot reach agreement.
- (3) An order under subsection (1) has effect as an agreement between— 35
- (a) the sewerage licensee, and
 - (b) the sewerage undertaker required to perform the duty in question.
- (4) On the application of a party to a section 117G agreement, the Authority may, if it is satisfied that the parties cannot reach agreement on the variation or termination of the agreement, by order vary or terminate the agreement. 40
- (5) If an order under subsection (4) is made in relation to a section 117G agreement, the agreement—
- (a) has effect subject to the provision made by the order, or
 - (b) ceases to have effect, as the case may be.
- (6) An order under subsection (4) may require one party to the agreement to pay compensation to the other. 45

- (7) Neither the OFT nor the Authority may exercise, in respect of an agreement for the performance of a duty under sections 117A to 117F by a sewerage undertaker, the powers conferred by –
 - (a) section 32 of the Competition Act 1998 (directions in relation to agreements); 5
 - (b) section 35(2) of that Act (interim directions).
- (8) Subsection (7)(b) does not apply to the exercise of powers in respect of conduct –
 - (a) which is connected with an agreement for the performance of a duty under sections 117A to 117F by a sewerage undertaker, and 10
 - (b) in respect of which section 35(1) of the Competition Act 1998 applies because of an investigation under section 25 of that Act relating to a suspected infringement of the Chapter 2 prohibition imposed by section 18(1) of that Act. 15
- (9) In this Chapter a reference to a section 117G agreement is a reference to –
 - (a) an agreement for the performance of a duty under sections 117A to 117F by a sewerage undertaker, or
 - (b) an order deemed to be such an agreement under subsection (3), or 20
 - (c) an agreement varied by order under subsection (4).

117H Codes relating to duties under sections 117A to 117F

- (1) The Authority may issue one or more codes in respect of section 117G agreements. 25
- (2) A code may set out –
 - (a) a procedure for negotiating a section 117G agreement;
 - (b) a procedure for negotiating an agreement to vary or terminate a section 117G agreement.
- (3) A code may set out – 30
 - (a) terms and conditions to be incorporated into a section 117G agreement;
 - (b) principles for determining the terms and conditions that should or should not be incorporated into a section 117G agreement. 35
- (4) The terms and conditions that may be incorporated into a section 117G agreement may include terms and conditions as to –
 - (a) the duration of the agreement;
 - (b) the use of a sewerage licensee's retail or network infrastructure by a sewerage undertaker or another sewerage licensee. 40
- (5) A code may set out the steps to be taken by the Authority in determining for the purposes of section 117G(2) whether a sewerage undertaker is, in the particular case, required to perform a duty under sections 117A to 117F. 45
- (6) If the Authority considers that a sewerage undertaker or a sewerage licensee is not acting as required by a code, the Authority may give

- the undertaker or the licensee a direction to do, or not to do, a thing specified in the direction.
- (7) It is the duty of a sewerage undertaker or a sewerage licensee to comply with a direction under subsection (6), and this duty is enforceable by the Authority under section 18. 5
- (8) The Authority may issue codes that apply –
- (a) generally,
 - (b) to a specified person or description of person;
 - (c) in relation to a specified duty or duties under sections 117A to 117F. 10
- 117I Codes: procedure**
- (1) The Authority must prepare a draft of any code under section 117H.
- (2) The Authority must consult the following about the draft code –
- (a) the Secretary of State;
 - (b) the Environment Agency; 15
 - (c) the Council;
 - (d) any sewerage undertakers likely to be affected by the code;
 - (e) any sewerage licensees likely to be affected by the code;
 - (f) such other persons as the Authority thinks appropriate.
- (3) The Authority must specify the period (“the consultation period”) within which a person may make representations about the draft code. 20
- (4) Before a code prepared by the Authority is issued, the Secretary of State may direct the Authority –
- (a) not to issue the code, or 25
 - (b) to issue the code with specified modifications.
- (5) A direction under subsection (4) must be given within the period of 28 days beginning with the day after the end of the consultation period.
- 117J Codes: revision** 30
- (1) The Authority may revise a code issued under section 117H.
- (2) Sections 117H and 117I apply to a revision as to an original code.
- (3) A revised code may include provision for applying any of its revisions to section 117G agreements made before the revised code comes into effect. 35
- 117K Rules about charges**
- (1) The Authority must issue rules about charges that may be imposed by sewerage undertakers under a section 117G agreement.
- (2) The rules may in particular specify –
- (a) what types of charges may be imposed; 40
 - (b) the amount or the maximum amount, or a method for determining the amount or maximum amount, of any type of charge;

- (c) principles for determining what types of charges may or may not be imposed;
 - (d) principles for determining the amount of any charge that may be imposed.
- (3) The Secretary of State may issue guidance as to the contents of rules under this section. 5
- (4) The Secretary of State must –
 - (a) prepare a draft of any proposed guidance and consult the Authority and the relevant persons about the draft;
 - (b) lay a copy of the guidance before both Houses of Parliament; 10
 - (c) publish the guidance.
- (5) The Authority must have regard to the guidance in making rules under this section.
- (6) The Authority must –
 - (a) prepare a draft of any proposed rules, and 15
 - (b) consult the Secretary of State and the relevant persons about the draft.
- (7) The relevant persons are –
 - (a) the Council;
 - (b) any sewerage undertakers likely to be affected by the guidance or the rules; 20
 - (c) any sewerage licensees likely to be affected by the guidance or the rules;
 - (d) such other persons as the person who is consulting thinks appropriate. 25
- (8) The rules may make provision which applies –
 - (a) generally,
 - (b) to a specified person or description of person;
 - (c) in relation to a specified duty or duties under sections 117A to 117F. 30
- (9) If the Authority considers that a sewerage undertaker is not acting as required by rules under this section, the Authority may –
 - (a) give the undertaker a direction to do, or not to do, a thing specified in the direction, or
 - (b) in a case where a section 117G agreement to which the undertaker is party requires modification in order to conform to the rules, give a direction to the undertaker and the sewerage licensee in question to modify the agreement. 35
- (10) It is the duty of a sewerage undertaker or a sewerage licensee to comply with a direction under subsection (9), and this duty is enforceable by the Authority under section 18. 40
- (11) The Authority may revise rules under this section.
- (12) This section applies to a revision as it applies to the original rules under this section.

- (13) Revised rules may include provision for applying any of the revisions to section 117G agreements made before the revised rules come into effect.

117L Reduction of charges in particular cases

- (1) A person who is party to a section 117G agreement, or who is proposing to enter an agreement that would if made be a section 117G agreement, may apply to the Authority for rules under section 117K to be varied so as to enable a reduction in charges payable for the removal of matter from, or for dealing with matter in, a sewerage system under the agreement or proposed agreement. 5
10
- (2) An application under subsection (1) may only be made if the sewerage licence in question gives the holder of the licence a retail authorisation.
- (3) The Authority may grant the application if it is satisfied that –
- (a) a reduction in the charges that would otherwise apply is justified by steps to reduce or manage the discharge of matter from relevant premises that are taken or proposed to be taken by a person (who need not be a party to the agreement), and 15
- (b) it is otherwise reasonable to reduce charges imposed in the particular case. 20
- (4) Relevant premises are premises that are or would be provided with sewerage services by reference to the removal of matter or the dealing with matter to which the section 117G agreement relates.
- (5) If the Authority grants the application, it must specify how the rules under section 117K are to be varied. 25
- (6) The Authority may make the application of some or all of the variations subject to compliance with conditions.
- (7) The conditions may be directed to either party to the section 117G agreement.
- (8) The conditions may in particular be designed so as to secure a reduction in the charges payable by a person whose steps are relied on to satisfy the requirement in subsection (3)(a). 30
- (9) The Secretary of State may issue guidance about varying rules under this section.
- (10) The Secretary of State must – 35
- (a) prepare a draft of any proposed guidance and consult the Authority and the relevant persons about the draft;
- (b) lay a copy of the guidance before both Houses of Parliament;
- (c) publish the guidance.
- (11) The relevant persons are – 40
- (a) the Council;
- (b) any sewerage undertakers likely to be affected by the guidance or the rules;
- (c) any sewerage licensees likely to be affected by the guidance or the rules; 45

(d) such other persons as the person who is consulting thinks appropriate.

(12) The Authority must have regard to the guidance in exercising its functions under this section.

117M Designation of strategic sewerage provision 5

(1) Subsection (2) applies if at any time the Authority determines that the removal of matter from a sewerage undertaker's sewerage system that the undertaker is required to permit under section 117C or 117F in accordance with a section 117G agreement constitutes strategic sewerage provision. 10

(2) The Authority must designate the removal of matter as strategic sewerage provision.

(3) Subsection (4) applies if –
(a) a sewerage undertaker requests the Authority to make a determination that a particular removal of matter constitutes strategic sewerage provision for the purposes of subsection (1), or 15

(b) the Authority otherwise proposes to make a determination that a particular removal of matter constitutes strategic sewerage provision for the purposes of subsection (1). 20

(4) The Authority must give notice of the request or proposed determination to –
(a) the Secretary of State;
(b) the Environment Agency;
(c) the other party or parties, or the parties, to the section 117G agreement; and 25
(d) such other persons (if any) as the Authority thinks it appropriate to notify.

(5) A notice under subsection (4) must specify the time within which representations or objections with respect to the request or proposed determination may be made. 30
The time specified may not be less than 28 days from the date on which the notice was given.

(6) The Authority must consider any representations or objections which are duly made and not withdrawn. 35

(7) If the Authority determines that a particular removal of matter designated under this section as strategic sewerage provision no longer constitutes such provision, it must cancel its designation.

(8) If the Authority proposes to make a determination under subsection (7) that a particular removal of matter no longer constitutes strategic sewerage provision, it must give notice of the proposed determination to – 40
(a) the Secretary of State;
(b) the Environment Agency; and
(c) the parties to the section 117G agreements in question. 45

- (9) Subsection (5) applies to a notice under subsection (8) as it applies to a notice under subsection (4), and subsection (6) applies accordingly.
- (10) For the purposes of this section, a removal of matter from a sewerage system is strategic sewerage provision if, without that removal of matter, there is a substantial risk that the sewerage undertaker would be unable –
- (a) to maintain its services to its own customers, and
 - (b) to fulfil its obligations under section 117B to deal with matter in its sewerage system.

117N Designation of collective strategic provision 10

- (1) Subsection (2) applies if at any time the Authority determines that two or more cases of the removal of matter from a sewerage system –
- (a) each of which is a removal by a sewerage licensee, and
 - (b) each of which is a removal that a sewerage undertaker is required to permit under section 117C or 117F in accordance with a section 117G agreement,
- constitute collective strategic sewerage provision. 15
- (2) The Authority must designate the cases of the removal of matter as a collective strategic supply. 20
- (3) Subsection (4) applies if –
- (a) a sewerage undertaker requests the Authority to make a determination that two or more cases of the removal of matter from a sewerage system constitute collective strategic sewerage provision for the purposes of subsection (1), or
 - (b) the Authority otherwise proposes to make a determination that two or more cases of the removal of matter from a sewerage system constitute collective strategic sewerage provision for the purposes of subsection (1).
- 25
- (4) The Authority must give notice of the request or proposed determination to –
- (a) the Secretary of State;
 - (b) the Environment Agency;
 - (c) the other party or parties, or the parties, to the section 117G agreements in question; and
 - (d) such other persons (if any) as the Authority thinks it appropriate to notify.
- 30 35
- (5) A notice under subsection (4) must specify the time within which representations or objections with respect to the request or proposed determination may be made. 40
- The time specified may not be less than 28 days from the date on which the notice was given.
- (6) The Authority must consider any representations or objections which are duly made and not withdrawn.
- (7) If the Authority determines that the cases of the removal of matter from a sewerage system designated under this section as collective 45

- strategic sewerage provision no longer constitute such provision, it must cancel their designation.
- (8) If the Authority proposes to make a determination under subsection (7) that the cases of the removal of matter from a sewerage system no longer constitute collective strategic sewerage provision, it must give notice of the proposed determination to – 5
- (a) the Secretary of State;
 - (b) the Environment Agency; and
 - (c) the parties to the section 117G agreements in question.
- (9) Subsection (5) applies to a notice under subsection (8) as it applies to a notice under subsection (4), and subsection (6) applies accordingly. 10
- (10) For the purposes of this section, two or more cases of the removal of matter from a sewerage system are collective strategic sewerage provision if, without those cases of the removal of matter, there is a substantial risk that the sewerage undertaker would be unable – 15
- (a) to maintain its services to its own customers, and
 - (b) to fulfil its obligations under section 117B to deal with matter in its sewerage system.

Offences

- 117O Prohibition on unauthorised use of sewerage system** 20
- (1) No person may use the sewerage system of a sewerage undertaker whose area is wholly or mainly in England for the purpose of taking away matter discharged from the premises of –
- (a) a customer,
 - (b) the person so using that system, or 25
 - (c) a person associated with that person.
- (2) Subsection (1) is subject to subsections (3) and (4) and section 117Q.
- (3) Subsection (1) does not apply where that use of the system is made by –
- (a) the sewerage undertaker, or 30
 - (b) a sewerage licensee in pursuance of its sewerage licence.
- (4) The Secretary of State may by regulations specify further circumstances in which subsection (1) does not apply.
- (5) A person who contravenes subsection (1) is guilty of an offence.
- (6) An undertaking entered into which involves a contravention of subsection (1) is unenforceable. 35
- (7) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine. 40
- (8) Proceedings for an offence under this section may not be instituted except by –
- (a) the Secretary of State, or

(b) the Authority.

- (9) For the purposes of this section, a person (A) is associated with another person (B) if they would be associated with each other for the purposes of Schedule 2B if A were a sewerage licensee.
- (10) In this section and sections 117P and 117Q, references to the sewerage system of a sewerage undertaker are to be construed in accordance with section 17BA(8). 5

117P Prohibition on unauthorised removal of matter from sewerage system

- (1) No person other than the undertaker may –
- (a) remove matter from the sewerage system of a sewerage undertaker whose area is wholly or mainly in England, 10
 - (b) take matter discharged from particular premises for the purpose of discharging it into the sewerage system of a sewerage undertaker whose area is wholly or mainly in England, or 15
 - (c) convey matter removed from the sewerage system of a sewerage undertaker whose area is wholly or mainly in England to a different point in that system and discharge it at that point.
- (2) Subsection (1) is subject to subsections (3) and (4) and section 117Q. 20
- (3) Subsection (1) does not apply where –
- (a) matter is removed, taken or conveyed by a sewerage licensee in pursuance of its sewerage licence, or
 - (b) matter is removed by another sewerage undertaker under a main connection agreement (within the meaning of section 110B). 25
- (4) The Secretary of State may by regulations specify further circumstances in which subsection (1) does not apply.
- (5) An undertaking entered into which involves a contravention of subsection (1) is unenforceable. 30
- (6) A person who contravenes subsection (1) is guilty of an offence.
- (7) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to a fine not exceeding £20,000;
 - (b) on conviction on indictment, to a fine.
- (8) For the purposes of section 210, the penalty on conviction on indictment of an offence under this section is to be deemed to include imprisonment for a term not exceeding two years (in addition to or instead of a fine). 35
- (9) Proceedings for an offence under this section may not be instituted except by –
- (a) the Secretary of State, or
 - (b) the Authority. 40

117Q Sections 117O and 117P: exemptions

- (1) The Secretary of State may by order made by statutory instrument grant exemption from section 117O(1) or 117P(1) to –
 - (a) a person or persons of a class;
 - (b) generally or to such extent as may be specified in the order; 5
 - (c) unconditionally or subject to such conditions as may be specified in the order.

- (2) Before making an order under subsection (1), the Secretary of State must give notice –
 - (a) stating that the Secretary of State proposes to make such an order and setting out the terms of the proposed order; 10
 - (b) stating the reasons why the Secretary of State proposes to make the order in the terms proposed; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made, 15and must consider any representations or objections which are duly made and not withdrawn.

- (3) The notice required by subsection (2) is to be given –
 - (a) by serving a copy of it on the Authority, and 20
 - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.

- (4) Notice of an exemption granted to a particular person is to be given – 25
 - (a) by serving a copy of the exemption on the person, and
 - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.

- (5) Notice of an exemption granted to persons of a particular class is to be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of – 30
 - (a) persons of that class, and
 - (b) other persons who may be affected by it. 35

- (6) An exemption may be granted –
 - (a) indefinitely, or
 - (b) for a period specified in, or determined by or under, the exemption.

- (7) The conditions that may be specified may, in particular, require any person carrying on any activity allowed by the exemption – 40
 - (a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;
 - (b) except in so far as the Secretary of State or the Authority consents to the person's doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; 45

- (c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.

117R Section 117Q: supplementary

- (1) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to a particular person under section 117Q(1) or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions – 5
- (a) at the person's request, 10
- (b) in accordance with any provision of the order by which the exemption was granted, or
- (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (2) The Secretary of State may by order made by statutory instrument revoke an order by which an exemption was granted to persons of a particular class under section 117Q(1) or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions – 15
- (a) in accordance with any provision of the order by which the exemption was granted, or 20
- (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (3) The Secretary of State may by direction withdraw an exemption granted to persons of a particular class under section 117Q(1) from any person of that class – 25
- (a) at the person's request,
- (b) in accordance with any provision of the order by which the exemption was granted, or
- (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person. 30
- (4) Before making an order under subsection (1)(b) or (c) or (2) or giving a direction under subsection (3)(b) or (c), the Secretary of State must – 35
- (a) consult the Authority, and
- (b) give notice –
- (i) stating that the Secretary of State proposes to make such an order or give such a direction,
- (ii) stating the reasons why the Secretary of State proposes to make such an order or give such a direction, and 40
- (iii) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposals may be made, 45
- and must consider any representations or objections which are duly made and not withdrawn.
- (5) The notice required by subsection (4)(b) is to be given –

- (a) where the Secretary of State is proposing to make an order under subsection (1)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;
 - (b) where the Secretary of State is proposing to make an order under subsection (2), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; 5
 - (c) where the Secretary of State is proposing to give a direction under subsection (3)(b) or (c), by serving a copy of it on the person from whom the Secretary of State proposes to withdraw the exemption. 10
- (6) A statutory instrument containing—
- (a) an order under subsection (1) or (2), or
 - (b) an order under section 117Q(1), 15
- is subject to annulment in pursuance of a resolution of either House of Parliament.”

SCHEDULE 5

Section 5

EXTENSION OF LICENSING PROVISIONS IN RELATION TO WALES

- 1 The Water Industry Act 1991 is amended as follows. 20
- 2 In section 2 (general duties with respect to water industry) (as amended by Schedule 7) —
- (a) in subsection (2C), paragraph (f) is repealed;
 - (b) subsection (2D) is repealed.
- 3 (1) Section 17A (water supply licences) (as substituted by section 1) is amended as follows. 25
- (2) In subsection (2), paragraphs (e) and (f) are repealed.
 - (3) In subsection (3), the words “(including their operation in England and Wales)” are repealed.
- 4 (1) Section 17AA (water supply licences: restrictions on grants) (as substituted by section 1) is amended as follows. 30
- (2) In subsection (1) —
 - (a) in the opening words, the words “a supplementary authorisation,” are repealed;
 - (b) after paragraph (b) there is inserted — 35
 - “(c) the Welsh Ministers;
 - (d) the Chief Inspector of Drinking Water for Wales if there is one.”
- (3) After subsection (1) there is inserted —
- “(1A) Before the Secretary of State grants a water supply licence giving a wholesale authorisation, a retail infrastructure authorisation or a 40

	network infrastructure authorisation, the Secretary of State must consult—	
	(a) the Welsh Ministers;	
	(b) the Chief Inspector of Drinking Water for Wales if there is one.”	5
	(4) Subsections (2) and (3) are repealed.	
	(5) In subsection (6), paragraphs (b) and (c) are repealed.	
5	In section 17B (guidance and interpretation) (as amended by section 2) —	
	(a) in subsection (4A), the words “, in the case of an undertaker whose area is wholly or mainly in England,” are repealed;	10
	(b) subsections (5) to (8) are repealed.	
6	(1) Section 17BA (sewerage licences) (as inserted by section 4) is amended as follows.	
	(2) In subsection (1), the words “whose area is wholly or mainly in England” are repealed.	15
	(3) After subsection (6) there is inserted —	
	“(6A) Before giving consent or a general authorisation, the Secretary of State must consult the Welsh Ministers.”	
7	(1) Section 17BB (sewerage licences: restrictions on grants) (as inserted by section 4) is amended as follows.	20
	(2) In subsection (1), after “of State” there is inserted “, the Welsh Ministers”.	
	(3) After subsection (1) there is inserted —	
	“(1A) The Secretary of State must consult the Welsh Ministers before granting a licence that gives —	
	(a) a wholesale authorisation,	25
	(b) a retail infrastructure authorisation,	
	(c) a network infrastructure authorisation, or	
	(d) a disposal authorisation.”	
8	In section 17C (meaning of household premises) (as amended by Schedule 7), in subsection (1), for “paragraphs 4 and 9(a)” there is substituted “paragraph 4”.	30
9	Section 17D (the threshold requirement) is repealed (if not previously repealed by an order under section 3).	
10	(1) Section 17DA (guidance) (as inserted by Schedule 7) is amended as follows.	
	(2) Subsection (1)(a) is repealed.	35
	(3) Subsection (3) is repealed.	
	(4) In subsection (4), the words “or (3)” are repealed.	
	(5) In subsection (5)(a), after “Schedule 2A” there is inserted “or paragraph 4 of Schedule 2B”.	
11	In section 17E (determinations by the Authority) (as amended by Schedule 7), in subsection (2) —	40

- (a) in paragraph (a) the words “or 9(a) or (b)” are repealed;
 - (b) paragraph (c) is repealed.
- 12 In section 17G (water supply licence conditions) (as amended by Schedule 7), in subsection (4)(a)(iii), the words “so far as subsection (3) applies to water supply licences,” are repealed. 5
- 13 (1) Section 17H (standard conditions of water supply licences) (as amended by Schedule 7) is amended as follows.
 - (2) In subsection (8)(b)(i), the words from “if the” to “supplementary authorisation,” are repealed.
 - (3) In subsection (9), the words from “in a case” to “subsection (8)(b)(i)” are repealed. 10
- 14 (1) Section 17HA (standard conditions of sewerage licences) (as inserted by Schedule 7) is amended as follows.
 - (2) In subsection (9)(b), after sub-paragraph (iv) there is inserted –
“(v) on the Welsh Ministers.” 15
 - (3) In subsection (10), after “of State” there is inserted “(after consulting the Welsh Ministers)”.
- 15 In section 17I (modifications of water supply licences by agreement) (as amended by Schedule 7) –
 - (a) in subsection (4)(b)(iv), the words from the beginning to “licence,” are repealed; 20
 - (b) in subsection (5A), the words “in relation to a water supply licence” are repealed.
- 16 (1) Section 17J (modification of standard conditions of water supply licences) (as amended by Schedule 7) is amended as follows. 25
 - (2) In subsection (4)(b)(iv), the words from the beginning to “licence,” are repealed.
 - (3) In subsection (5A), the words “in relation to a water supply licence” are repealed.
 - (4) In subsection (10), the words “in relation to the standard conditions of water supply licences” are repealed. 30
- 17 In section 17K (water supply licences: modification references to Competition Commission) (as amended by Schedule 7), in subsection (5)(b)(iv), the words from the beginning to “licences,” are repealed.
- 18 (1) Section 17N (water supply licences: reports on modification references) (as amended by Schedule 7) is amended as follows. 35
 - (2) In subsection (10)(a)(iv), the words from the beginning to “licence,” are repealed.
 - (3) In subsection (11)(a)(ii), the words from the beginning to “licences,” are repealed. 40
 - (4) In subsection (12), the words “, if the report relates to water supply licences,” are repealed.

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| 19 | In section 17P (water supply licences: Commission’s power of veto following report) (as amended by Schedule 7), in subsection (7)(b)(v), the words from the beginning to “licences,” are repealed. | |
| 20 | In section 23 (meaning and effect of special administration order) (as amended by Schedule 7), in subsection (6)(a), the words “or supplementary” are repealed. | 5 |
| 21 | In section 24 (special administration orders made on special petitions) (as amended by Schedule 7), in subsection (1B), the words from “in relation to” to “supplementary authorisation,” are repealed. | |
| 22 | In section 27C (the interests of consumers) (as amended by Schedule 7) –
(a) in subsection (1), paragraph (f) is repealed;
(b) subsection (2) is repealed. | 10 |
| 23 | In section 52 (the domestic supply duty), subsection (4A)(c) is repealed. | |
| 24 | (1) Section 66A (use of water undertaker’s supply system) (as inserted by Schedule 2) is amended as follows.
(2) Subsection (2) is repealed.
(3) In subsection (6)(a), the words “in the case of a request under subsection (1),” are repealed.
(4) In subsection (6), paragraph (b) is repealed.
(5) In subsection (9)(a), the words “or (2)” are repealed.
(6) In subsection (10)(c), the words “, a restricted retail authorisation” are repealed. | 15 |
| 25 | (1) Section 66AA (water supply from water undertaker) (as inserted by Schedule 2) is amended as follows.
(2) Subsection (2) is repealed.
(3) In subsection (3)(a), the words “or, as the case may be, subsection (2)” are repealed.
(4) In subsection (5) –
(a) in paragraph (a), the words “or, as the case may be, R” are repealed;
(b) in paragraph (b), the words “or, as the case may be, R” are repealed.
(5) In subsection (7)(a), the words “or (2)” are repealed. | 25 |
| 26 | (1) Section 66B (introduction of water into water undertaker’s supply system) (as inserted by Schedule 2) is amended as follows.
(2) Subsections (2) and (3) are repealed.
(3) In subsection (4) –
(a) in paragraph (a), the words “in a case falling within subsection (1),” are repealed;
(b) paragraphs (b) and (c) are repealed;
(c) in paragraph (d), for “steps under paragraphs (a), (b) or (c) (as the case may be)” there is substituted “such steps”.
(4) In subsection (6)(a), the words “, (2) or (3)” are repealed. | 30
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- (5) Subsections (7) and (8) are repealed.
- (6) In subsection (9), the words “or (b)(i) or (ii)” are repealed.
- (7) Subsection (10)(b) is repealed.
- 27 (1) Section 66C (introduction of water provided by secondary undertaker) (as inserted by Schedule 2) is amended as follows. 5
- (2) In subsection (1), the words from “A request under paragraph (a)” to the end are repealed.
- (3) Subsections (2) to (4) are repealed.
- (4) In subsection (5), the words “by virtue of subsection (1), (2) or (4)” are repealed. 10
- (5) In subsection (6)(a), the words “, L2, L3 or R” are repealed.
- (6) In subsection (7), the words “, L2 or R” are repealed.
- (7) In subsection (9) –
- (a) in paragraph (a), the words “, (2), (3) or (4),” are repealed;
- (b) in paragraph (b), the words “(or, in the case of a request for the purposes of subsection (3), the undertaker)” are repealed. 15
- (8) In subsection (11), the words “, (2), (3) or (4)” are repealed.
- 28 In section 66CC (determinations by Authority) (as inserted by Schedule 2), in subsection (3) –
- (a) after “section 66B(5)” there is inserted “or 66CA(4)”; 20
- (b) after “introduction of water into” there is inserted “, or the taking of water from,”.
- 29 In section 66EA (reduction of charges in particular cases) (as inserted by Schedule 2), in subsection (2), the words “or a restricted retail authorisation” are repealed. 25
- 30 In section 66G (designation of strategic supply) (as amended by Schedule 2), in subsection (11), the words from “or a restricted retail authorisation” to the end are repealed.
- 31 In section 66H (designation of collective strategic supply) (as amended by Schedule 2), in subsection (11), the words from “or a restricted retail authorisation” to the end are repealed. 30
- 32 (1) Section 68 (duties of water undertakers and licensed water suppliers with respect to water quality) (as amended by Schedule 7), is amended as follows.
- (2) In subsection (1A) –
- (a) in paragraph (a), the words “or restricted retail authorisation” are repealed; 35
- (b) in paragraph (b), the words “or restricted retail authorisation” are repealed.
- (3) In subsection (6)(a), the words “a restricted retail authorisation,” are repealed. 40
- 33 (1) Section 117I (codes: procedure) (as inserted by Schedule 4) is amended as follows.

- (2) In subsection (2) –
- (a) in paragraph (a), at the end there is inserted “, in a case where the draft code relates to section 117G agreements made with sewerage undertakers whose areas are wholly or mainly in England”;
 - (b) after paragraph (a) there is inserted – 5
 - “(aa) the Welsh Ministers, in a case where the draft code relates to section 117G agreements made with sewerage undertakers whose areas are wholly or mainly in Wales;”.
- (3) In subsection (4), at the end there is inserted – 10
- “The Secretary of State may not give a direction in relation to a code if or to the extent that the Welsh Ministers may give a direction in relation to the code under subsection (4A).”
- (4) After subsection (4), there is inserted –
- “(4A) Before a code prepared by the Authority is issued, the Welsh Ministers may direct the Authority – 15
- (a) not to issue the code, or
 - (b) to issue the code with specified modifications.
- The Welsh Ministers may give a direction in relation to a code only if, or only to the extent that, the code relates to section 117G agreements made with one or more sewerage undertakers, which or each of which is a sewerage undertaker whose area is wholly or mainly in Wales.” 20
- (5) In subsection (5), after “subsection (4)”, there is inserted “or (4A)”.
- 34 (1) Section 117K (rule about charges) (as inserted by Schedule 4) is amended as follows. 25
- (2) In subsection (3), after “of State” there is inserted “and the Welsh Ministers acting jointly”.
- (3) In subsection (4) –
- (a) after “of State” there is inserted “and the Welsh Ministers”; 30
 - (b) in paragraph (b), after “of Parliament” there is inserted “and the Assembly”.
- (4) In subsection (6)(b), after “of State” there is inserted “, the Welsh Ministers”.
- 35 (1) Section 117L (reduction of charges in particular cases) (as inserted by Schedule 4) is amended as follows. 35
- (2) In subsection (9), after “of State” there is inserted “and the Welsh Ministers acting jointly”.
- (3) In subsection (10) –
- (a) after “of State” there is inserted “and the Welsh Ministers”; 40
 - (b) in paragraph (b), after “of Parliament” there is inserted “and the Assembly”.
- (4) In subsection (11)(d), for “the person who is consulting thinks” there is substituted “the persons who are consulting think”.

- 36 In section 117M (designation of strategic sewerage provision) (as inserted by Schedule 4) –
- (a) in subsection (4), after paragraph (a) there is inserted –
“*(aa) the Welsh Ministers;*”;
 - (b) in subsection (8), after paragraph (a) there is inserted –
“*(aa) the Welsh Ministers;*”.
- 37 In section 117N (designation of collective strategic sewerage provision) (as inserted by Schedule 4) –
- (a) in subsection (4), after paragraph (a) there is inserted –
“*(aa) the Welsh Ministers;*”;
 - (b) in subsection (8), after paragraph (a) there is inserted –
“*(aa) the Welsh Ministers;*”.
- 38 In section 117O (prohibition on unauthorised use of sewerage system) (as inserted by Schedule 4), in subsection (1), the words “whose area is wholly or mainly in England” are repealed.
- 39 In section 117P (prohibition on unauthorised removal of matter from sewerage system) (as inserted by Schedule 4), in subsection (1), in each place, the words “whose area is wholly or mainly in England” are repealed.
- 40 In section 117R (section 117Q: supplementary) (as inserted by Schedule 4), at the end there is inserted –
- “(7) The power to –
 - (a) make an order under subsection (1) or (2) or section 117Q(1),
or
 - (b) give a direction under subsection (3),is exercisable by the Welsh Ministers (and not by the Secretary of State) in relation to any supply system of a sewerage undertaker whose area is wholly or mainly in Wales.
 - (8) Accordingly, subsections (1) to (5) and section 117Q apply in relation to an order made or a direction given by the Welsh Ministers by virtue of subsection (7) as they apply in relation to an order made or direction given by the Secretary of State.
 - (9) A statutory instrument containing an order made by the Welsh Ministers by virtue of subsection (7) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- 41 (1) Schedule 2A (water supply licences: authorisations) (as inserted by Schedule 1) is amended as follows.
- (2) Paragraphs 1 and 2 are repealed.
 - (3) Paragraphs 8 to 10 are repealed.
 - (4) In paragraph 11, for “requirements in paragraphs 4 and 9 are” there is substituted “requirement in paragraph 4 is”.
 - (5) In paragraph 12, for “paragraphs 4 and 9” there is substituted “paragraph 4”.

- 4 (1) Determining the authorities (whether public or local or the Minister) by whom functions conferred by the regulations –
 - (a) in relation to permits under the regulations, or
 - (b) otherwise for or in connection with the regulated field,are to be exercisable (in this Schedule referred to as “regulators”). 5
 - (2) Specifying any purposes for which any such functions are to be exercisable by regulators.
 - (3) Enabling the Secretary of State to specify authorities in Wales that may exercise, in relation to England, specified functions conferred by the regulations, and to specify the purposes for which such specified functions may be exercised by such authorities. 10
- 5 Enabling the Minister to give directions which regulators are to comply with, or guidance which regulators are to have regard to, in exercising functions under the regulations, including –
- (a) directions providing for any functions exercisable by one regulator to be instead exercisable by another; 15
 - (b) directions given for the purpose of the implementation of any obligations of the United Kingdom under the EU treaties or under any international agreement to which the United Kingdom is a party;
 - (c) directions relating to the exercise of any function in a particular case or class of case (except functions in relation to the investigation or prosecution, in a particular case, of an offence under the regulations). 20

Permits

- 6 Prohibiting persons from carrying on any activities of any specified description, except – 25
- (a) under a permit in force under the regulations, and
 - (b) in accordance with any conditions to which the permit is subject.
- 7 Specifying restrictions or other requirements in connection with the grant of permits (including provisions for restricting the grant of permits to those who are fit and proper persons within the meaning of the regulations); and otherwise regulating the procedure to be followed in connection with the grant of permits. 30
- 8 (1) Prescribing the contents of permits.
- (2) Authorising permits to be granted subject to conditions imposed by regulators. 35
- (3) Securing that permits have effect subject to –
- (a) conditions specified in the regulations; or
 - (b) rules of general application specified in or made under the regulations.
- 9 (1) Requiring permits or the conditions to which permits are subject to be reviewed by regulators (whether periodically or in any specified circumstances). 40
- (2) Authorising or requiring the variation of permits or such conditions by regulators (whether on applications made by holders of permits or otherwise). 45

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- (3) Regulating the making of changes in the carrying on of the activities.
- 10 (1) Regulating the transfer or surrender of permits.
 (2) Authorising the revocation of permits by regulators.
 (3) Authorising the imposition by regulators of requirements with respect to the taking of preventive action (by holders of permits or other persons) in connection with the surrender or revocation of permits. 5
- 11 Authorising the Minister to make schemes for the charging by regulators of fees or other charges in respect of, or in respect of an application for –
 (a) the grant of a permit,
 (b) the variation of a permit or the conditions to which it is subject, or 10
 (c) the transfer or surrender of a permit,
 or in respect of the subsistence of a permit.
- 12 Authorising, or authorising the Minister to make schemes for the charging by the Minister or public or local authorities of fees or other charges in respect of – 15
 (a) any advice given, or
 (b) any testing, assessment or investigation done or other action taken, in cases where the advice or action is in any way in anticipation of, or otherwise in connection with, the making of applications for the grant of permits or is carried out in pursuance of conditions to which any permit is subject. 20
- Further regulation*
- 13 (1) Requiring persons who propose to carry out activities of a specified description to give notice of their proposals to regulators.
 (2) Requiring owners or occupiers of land to give notice to regulators of any obstruction of a specified description occurring on the land. 25
- 14 Requiring persons to apply for a permit under the regulations in respect of activities of a specified description.
- 15 (1) Authorising a regulator, where a person is carrying on an activity of a specified description – 30
 (a) to serve notice on the person requiring them to cease carrying on the activity or, at their own cost, to take such action in connection with the activity as may be specified in the notice, or
 (b) to arrange itself for action to be taken in connection with the activity.
- (2) Authorising a regulator – 35
 (a) to serve notice on persons of a specified description requiring them, at their own cost, to take such action as may be specified in the notice, or
 (b) to arrange itself for action to be taken, in respect of a structure or obstruction of a specified description. 40
- 16 Imposing requirements, or authorising regulators to impose requirements on persons of a specified description in relation to the operation and maintenance of specified structures.

Information, publicity and consultation

- 17 Enabling persons of any specified description (whether or not they are holders of permits) to be required –
- (a) to compile information about –
 - (i) regulated activities, and 5
 - (ii) in the case of fish regulations, structures or obstructions that affect, or could affect, the movement of fish through regulated waters;
 - (b) to provide such information in such manner as is specified in the regulations. 10
- 18 Securing –
- (a) that publicity is given to specified matters;
 - (b) that regulators maintain registers of specified matters (but excepting information which under the regulations is, or is determined to be, commercially confidential and subject to any other exceptions specified in the regulations) which are open to public inspection; 15
 - (c) that copies of entries in such registers, or of specified documents, may be obtained by members of the public.
- 19 Requiring or authorising regulators to carry out consultation in connection with the exercise of any of their functions; and providing for them to take into account representations made to them on consultation. 20

Enforcement and offences

- 20 (1) Conferring on regulators functions with respect to the monitoring and inspection of –
- (a) the carrying on of regulated activities, or 25
 - (b) regulated structures or obstructions.
- (2) Authorising regulators to appoint suitable persons to exercise any such functions and conferring powers on persons so appointed such as those specified in –
- (a) sections 169 to 174 of the Water Resources Act 1991; 30
 - (b) section 64 of the Land Drainage Act 1991;
 - (c) section 108(4) of the Environment Act 1995;
 - (d) regulation 26 of the Eels (England and Wales) Regulations 2009 (S.I. 2009/3344);
 - (e) sections 31 and 32 of the Salmon and Freshwater Fisheries Act 1975. 35
- (3) Functions which may be conferred in reliance on sub-paragraph (1) include –
- (a) power to take samples or to make copies of information;
 - (b) power to arrange for preventive or remedial action to be taken at the expense of holders of permits. 40
- (4) In sub-paragraph (1) “regulated structures or obstructions” means structures or obstructions which –
- (a) may be the subject of notices served by regulators under the regulations, or
 - (b) may be subject to requirements imposed under the regulations. 45

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- | | | |
|----|---|----------|
| 21 | <p>(1) Authorising regulators to serve on holders of permits –</p> <ul style="list-style-type: none"> (a) notices requiring them to take remedial action in respect of contraventions, actual or potential, of conditions to which their permits are subject; (b) notices requiring them to provide such financial security as the regulators serving the notices consider appropriate pending the taking of remedial action in respect of any such contraventions; 5 (c) notices requiring them to take steps to remove or reduce, or to mitigate the effect of the potential consequences of, the following imminent risks (whether or not arising from any such contraventions) – 10 <ul style="list-style-type: none"> (i) an imminent risk of a significant waste of water resources or of significant damage to the environment, in the case of water regulations; (ii) an imminent risk of a significant impediment to drainage or of a flood, in the case of flood regulations; 15 (iii) an imminent risk of a significant impediment to the movement of fish through regulated waters, in the case of fish regulations. | |
| 22 | Authorising regulators to suspend the operation of permits so far as having effect to authorise the carrying on of activities to which they relate. | 20 |
| 23 | Establishing a procedure for the resolution of disputes in relation to notices served by regulators under the regulations. | |
| 24 | Providing for the enforcement of notices served by regulators under the regulations by proceedings in the High Court. | 25 |
| 25 | Where action is required to be taken by a person under the regulations or pursuant to a notice served under the regulations, authorising regulators in specified circumstances to take action instead of that person; and making provision for the liability of that person in respect of reasonable costs incurred by the regulators in taking such action. | 30 |
| 26 | The creation of offences and dealing with matters relating to such offences, including – <ul style="list-style-type: none"> (a) the provision of defences, and (b) evidentiary matters. | |
| 27 | Enabling, where a person has been convicted of an offence under the regulations – <ul style="list-style-type: none"> (a) a court dealing with that person for the offence to order the taking of remedial action (in addition to or instead of imposing any punishment), or (b) a regulator to arrange for such action to be taken at that person’s expense. | 35
40 |
| 28 | Where a person causes damage to any structure constructed, altered or maintained by a regulator under these regulations, authorising the regulator to require the person to pay the expenses of the regulator in repairing the damage and providing for the manner in which such expenses may be recovered. | 45 |

Appeals

- 29 Conferring rights of appeal in respect of decisions made, notices served or other things done (or omitted to be done) under the regulations; and making provision for (or for the determination of) matters relating to the making, considering and determination of such appeals (including provision for or in connection with the holding of inquiries or hearings). 5

General

- 30 (1) In the case of water regulations, making provision which, subject to any modifications that the Minister considers appropriate, corresponds or is similar to any provision made by or under, or capable of being made under – 10
- (a) section 71 of the Water Industry Act 1991 (waste from water sources);
 - (b) Chapter 2 of Part 2 of the Water Resources Act 1991 (abstraction and impounding);
 - (c) Part 1 of the Water Act 2003 (abstraction and impounding). 15
- (2) Each reference to an enactment in sub-paragraphs (1)(a) to (c) is a reference to that enactment as it has effect on the coming into force of this paragraph.
- 31 (1) In the case of flood regulations, making provision which, subject to any modifications that the Minister considers appropriate, corresponds or is similar to – 20
- (a) any provision made by section 339 of the Highways Act 1980 (saving for works etc of drainage authorities etc);
 - (b) any provision made by or under, or capable of being made under, sections 109 and 110 of the Water Resources Act 1991 (erecting structures over main rivers etc prohibited without consent); 25
 - (c) any provision made by any byelaw, or capable of being made by any byelaw, under paragraph 5 of Schedule 25 to that Act (byelaws for flood defence and drainage purposes);
 - (d) any provision made by or under, or capable of being made under, sections 23 and 24 of the Land Drainage Act 1991 (obstructions etc in watercourses prohibited without consent); 30
 - (e) any provision made by any byelaw, or capable of being made by any byelaw, under section 66 of that Act (power to make byelaws: drainage systems, flood risk management work etc).
- (2) Each reference to an enactment in sub-paragraphs (1)(a) to (e) is a reference to that enactment as it has effect on the coming into force of this paragraph. 35
- 32 (1) In the case of fish regulations, making provision which, subject to any modifications that the Minister considers appropriate, corresponds or is similar to – 40
- (a) sections 9 to 15 and 18 of the Salmon and Freshwater Fisheries Act 1975 (obstructions to passage of fish);
 - (b) Part 4 of the Eels (England and Wales) Regulations 2009 (S.I. 2009/3344) (passage of eels).
- (2) Each reference to an enactment in sub-paragraph (1)(a) and (b) is a reference to that enactment as it has effect on the coming into force of this paragraph. 45
- 33 Making provision about the application of the regulations to the Crown.

PART 2

SUPPLEMENTARY PROVISION

Water regulations trading schemes: penalties

- 34 (1) Water regulations may authorise the inclusion in a trading scheme of –
- (a) provision for penalties in respect of contraventions of provisions of the scheme; 5
 - (b) provision for the amount of any penalty under the scheme to be such as may be set out in, or calculated in accordance with –
 - (i) the scheme, or
 - (ii) the regulations (including regulations made after the scheme starts to operate). 10
- (2) In this paragraph “trading scheme” means a scheme of the kind mentioned in paragraph 3(3).

Determination of matters by regulators

- 35 The regulations may make provision for anything which, by virtue of paragraphs 7 to 10, could be provided for by the regulations to be determined under the regulations by regulators. 15

Delegation between regulators

- 36 The regulations may make provision authorising regulators to arrange for specified functions to be exercised on their behalf by other regulators. 20

Imposition of conditions

- 37 In connection with the determination of conditions as mentioned in paragraph 8(3)(a) the regulations may in particular provide –
- (a) for such conditions to be determined in the light of any specified general principles and any directions or guidance given under the regulations; 25
 - (b) for such guidance to include guidance sanctioning reliance by a regulator on any arrangements referred to in the guidance to operate to secure a particular result as an alternative to imposing a condition.

Charging schemes 30

- 38 The regulations may –
- (a) require any such scheme as is mentioned in paragraph 11 or 12 to be so framed that the fees and charges payable under the scheme are sufficient, taking one year with another, to cover such expenditure (whether or not incurred by the regulator or other person to whom they are so payable) as is specified; 35
 - (b) authorise any such scheme to make different provision for different cases (and specify particular kinds of such cases).

Offences

- 39 (1) The regulations may provide for any such offence as is mentioned in paragraph 26 to be triable –
- (a) only summarily, or
 - (b) either summarily or on indictment. 5
- (2) The regulations may provide for any such offence to be punishable on summary conviction by a fine not exceeding such amount as is specified (which may not exceed £20,000).
- (3) The regulations may provide for such an offence to be punishable on indictment by – 10
- (a) imprisonment for a term not exceeding such period as is specified (which may not exceed two years), or
 - (b) a fine, or both.

SCHEDULE 7

Section 29 15

MINOR AND CONSEQUENTIAL AMENDMENTS

Water Industry Act 1991 (c. 56)

- 1 The Water Industry Act 1991 is amended as follows.
- 2 (1) Section 2 (general duties with respect to water industry) is amended as follows. 20
- (2) In subsection (1)(a), for “and of licensed water suppliers” there is substituted “, water supply licensees and sewerage licensees”.
- (3) In subsection (2A)(d), for “of a licensed water supplier” there is substituted “of a water supply licensee or sewerage licensee”.
- (4) In subsection (2C) – 25
- (a) the “and” after paragraph (d) is repealed;
 - (b) in paragraph (e), for the words from “not eligible” to the end there is substituted “are household premises (as defined in section 17C)”;
 - (c) at the end of paragraph (e) there is inserted “; and
 - (f) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are below the consumption threshold and in the area of a relevant undertaker whose area is wholly or mainly in Wales,”. 30
- (5) In subsection (2D), for the words from “not eligible” to “the total quantity” there is substituted “below the consumption threshold if the total quantity”. 35
- (6) In subsection (5A), in the definition of “the interests of consumers” –
- (a) in paragraph (a), for “licensed water suppliers” there is substituted “water supply licensees”;

- (b) in paragraph (b), for “by sewerage undertakers” there is substituted “either by sewerage undertakers or by sewerage licensees acting in their capacity as such”.
- (7) In subsection (6) –
- (a) in paragraph (a), for “and of licensed water suppliers” there is substituted “, water supply licensees and sewerage licensees”; 5
- (b) in paragraph (a), for the words from “contained in” to “153,” there is substituted “contained in –
- (i) Part 2 of this Act (except section 27A and Schedule 3A), or 10
- (ii) any of sections 37A to 38, 38ZA, 39, 39ZA, 39B, 39C, 40B to 40F, 66B, 66CC, 66D, 66DA to 66EA, 66F to 66H, 66K, 66L, 95, 95ZA, 96, 96ZA, 110C to 110G, 117G to 117N, 117Q, 117R, 153;” 15
- (c) in paragraph (b), “43, 43A,” and “100 and 100A” are repealed;
- (d) in paragraph (b), for “, 99,” there is substituted “and 99”.
- 3 In section 2A (guidance on social and environmental matters), in subsection (4)(e), for “licensed water suppliers” there is substituted “water supply licensees and sewerage licensees”. 20
- 4 In section 6 (appointment of relevant undertakers), in subsection (5A), for “a licensed water supplier” there is substituted “a water supply licensee or sewerage licensee”.
- 5 In section 12 (determinations under conditions of appointment), in subsection (3B) (application of certain provisions to references to Competition Commission under section 12) for “sections 16A and 16B” there is substituted “sections 14A and 14B”. 25
- 6 For the heading of Chapter 1A of Part 2 there is substituted –
- “WATER SUPPLY LICENCES AND SEWERAGE LICENCES”.
- 7 (1) Section 17B (provision supplementary to section 17A) is amended as follows. 30
- (2) For the title there is substituted “Meaning of supply system”.
- (3) Subsections (1) to (4) (provision as to guidance on extent of premises) are repealed.
- (4) Subsection (9) (references to a licensed water supplier) is repealed. 35
- 8 In section 17C (meaning of “household premises”), in subsection (1) for “section 17A(3)(a) above” there is substituted “paragraphs 4 and 9(a) of Schedule 2A and paragraph 2 of Schedule 2B”.
- 9 (1) Section 17D (the threshold requirement) is amended as follows.
- (2) In subsection (1) (purpose of section 17D) – 40
- (a) for “section 17A(3)(b) above” there is substituted “paragraph 9(b) of Schedule 2A”;
- (b) after “the supply of water to any premises” there is inserted “in accordance with a restricted retail authorisation”.

- (3) In subsection (2) (description of the requirement), for “licensed water supplier” there is substituted “water supply licensee”.
- (4) In subsection (3) (guidance on making estimate), for “the Secretary of State” there is substituted “the Welsh Ministers”.
- (5) Subsection (5) (duty of Secretary of State to consult the National Assembly for Wales before issuing guidance) is repealed. 5
- (6) Subsection (6) (application of guidance provision to threshold requirement) is repealed.
- (7) In subsection (7) (regulations as to entering into an undertaking to supply water) – 10
- (a) for “The Secretary of State” there is substituted “The Welsh Ministers”;
 - (b) for “licensed water supplier” there is substituted “water supply licensee”;
 - (c) the words “(subject to subsection (12) below)” are repealed. 15
- (8) In subsection (8) (regulations to alter the threshold) –
- (a) for “The Secretary of State” there is substituted “The Welsh Ministers”;
 - (b) the words “(subject to subsection (12) below)” are repealed.
- (9) In subsection (10) (procedure), for “each House of Parliament” there is substituted “the Assembly”. 20
- (10) In subsection (11) (consultation before making regulations) –
- (a) for “the Secretary of State”, in the first place where those words occur, there is substituted “the Welsh Ministers”;
 - (b) for “the Secretary of State thinks” there is substituted “the Welsh Ministers think”. 25
- (11) Subsections (12) and (13) (exercise of powers by Welsh Ministers) are repealed.
- 10 After section 17D there is inserted –
- “17DA Guidance”** 30
- (1) The Authority must publish guidance issued under –
 - (a) section 17D(3),
 - (b) paragraph 12 of Schedule 2A, or
 - (c) paragraph 4 of Schedule 2B,in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it. 35
 - (2) The Authority may, with the approval of the Secretary of State, revise the guidance issued under –
 - (a) paragraph 12 of Schedule 2A, or
 - (b) paragraph 4 of Schedule 2B. 40
 - (3) The Authority may, with the approval of the Welsh Ministers, revise the guidance issued under section 17D(3).

- (4) Subsection (1) applies to guidance revised under subsection (2) or (3) as it applies to guidance issued under the enactments mentioned in subsection (1).
- (5) Before giving approval to—
- (a) guidance issued under paragraph 12 of Schedule 2A, or
 - (b) guidance so issued that is revised under subsection (2),
- the Secretary of State must consult the Welsh Ministers.” 5
- 11 (1) Section 17E (determinations by the Authority) is amended as follows.
- (2) For subsection (1) there is substituted—
- “(1) The Authority may determine, in a case referred to it by— 10
- (a) a water supply licensee or a potential customer of a water supply licensee, or
 - (b) a sewerage licensee or a potential customer of a sewerage licensee,
- whether a proposed supply of water to, or proposed sewerage services for, the customer would be in accordance with what is authorised by the licensee’s licence.” 15
- (3) In subsection (2)—
- (a) in paragraph (a), for “section 17A(3) above” there is substituted “paragraph 4 or 9(a) or (b) of Schedule 2A”; 20
 - (b) after paragraph (a), there is inserted—
 - “(aa) the extent of the premises to be served for the purposes of paragraph 2 of Schedule 2B;”;
 - (c) in paragraph (b), after “to be supplied” there is inserted “or served”.
- 12 (1) Section 17F (procedure for granting water supply licences) is amended as follows. 25
- (2) In the title, after “water supply” there is inserted “and sewerage”.
- (3) In subsection (1), for paragraphs (a) to (c) there is substituted—
- “(a) a water supply licence,
 - (b) a sewerage licence, 30
 - (c) the variation of a water supply licence so as to alter the authorisations that it gives; or
 - (d) the variation of a sewerage licence so as to alter the authorisations that it gives,”.
- (4) In subsection (7), for paragraph (g) there is substituted— 35
- “(g) on each water supply licensee and sewerage licensee (other than the holder of the licence in question);”.
- 13 (1) Section 17G (water supply licence conditions) is amended as follows.
- (2) For the title there is substituted “Licence conditions”.
- (3) In subsection (1) (conditions to be included), for “water supply licence”, in both places, there is substituted “licence under this Chapter”. 40

- (4) After subsection (2), there is inserted –
- “(2A) Conditions may be included by virtue of subsection (1)(a) in a sewerage licence whether or not they are connected with –
- (a) effectual dealing with the contents of sewers, or
 - (b) the use of the sewerage system of a sewerage undertaker.” 5
- (5) In subsection (3) (directions and determinations), for “water supply licence” there is substituted “licence under this Chapter”.
- (6) In subsection (4) (persons who may give directions etc), in paragraph (a)(iii), at the beginning there is inserted “so far as subsection (3) applies to water supply licences,”. 10
- (7) In subsection (5) (duration and modification of conditions), for “water supply licence” there is substituted “licence under this Chapter”.
- 14 (1) Section 17H (standard conditions of water supply licences) is amended as follows.
- (2) For subsections (1) to (3) there is substituted – 15
- “(1) The Secretary of State may determine the conditions that are to be the standard conditions of water supply licences granted by the Secretary of State or the Authority.
- (1A) The Secretary of State is to publish the standard conditions in such manner as the Secretary of State considers appropriate. 20
- (2) The standard conditions may be different depending on the different authorisations or combinations of authorisations to which the conditions are to relate.
- (3) The power to determine standard conditions in relation to water supply licences giving a particular authorisation or a particular combination of authorisations may be exercised only before the grant of the first licence to give that authorisation or that particular combination of authorisations (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter).” 25 30
- (3) In subsection (4) (general provision about standard conditions), for “of either description” there is substituted “giving any particular authorisation or combination of authorisations”.
- (4) In subsection (8) (publication of notice of intention to modify standard conditions), in paragraph (b) – 35
- (a) for sub-paragraph (i) there is substituted –
 - “(i) if the notice relates to a water supply licence giving a restricted retail authorisation or a restricted retail authorisation and a supplementary authorisation, on the Welsh Ministers;” 40
 - (b) after sub-paragraph (iv) there is inserted –
 - “(v) if the application was forwarded by the Water Industry Commission for Scotland, on the Commission.” 45

- (5) In subsection (9) (direction not to exclude or modify a standard condition), for “the Assembly” there is substituted “the Welsh Ministers in a case where notice was served on them under subsection (8)(b)(i)”.
- 15 After section 17H there is inserted –
- “17HA Standard conditions of sewerage licences** 5
- (1) The Secretary of State may determine the conditions that are to be the standard conditions of sewerage licences granted by the Secretary of State or the Authority.
- (2) The Secretary of State is to publish the standard conditions in such manner as the Secretary of State considers appropriate. 10
- (3) The standard conditions may be different depending on the different authorisations or combinations of authorisations to which the conditions are to relate.
- (4) The power to determine standard conditions in relation to sewerage licences giving a particular authorisation or a particular combination of authorisations may be exercised only before the grant of the first licence to give that authorisation or that particular combination of authorisations (but this is without prejudice to the power to modify standard conditions in accordance with the provisions of this Chapter). 15
20
- (5) The standard conditions for the purposes of sewerage licences giving any particular authorisation or combination of authorisations may contain provision –
- (a) for any standard condition included in a licence of that description not to have effect until brought into operation in such manner and in such circumstances as may be specified in or determined under the standard conditions; 25
- (b) for the effect of any standard condition included in such a licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; and 30
- (c) for any standard condition included in such a licence which is for the time being suspended to be brought back into operation in such manner and in such circumstances as may be so specified or determined.
- (6) Subject to subsection (7), each condition which is a standard condition is to be incorporated by reference in each sewerage licence (or in each such licence to which the standard condition applies). 35
- (7) Subject to the following provisions of this section, the Secretary of State or the Authority may, in granting a licence, exclude or modify any of the standard conditions to such extent as the Secretary of State or (as the case may be) the Authority considers requisite to meet the circumstances of a particular case. 40
- (8) Before excluding any standard conditions or making any modifications under subsection (7), the Secretary of State or the Authority must give notice – 45
- (a) stating that the Secretary of State or (as the case may be) the Authority proposes to exclude the conditions or make the modifications and setting out the effect of so doing;

- (b) stating the reasons why the Secretary of State or (as the case may be) the Authority proposes to exclude the conditions or make the modifications; and
 - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made, 5

and the Secretary of State or (as the case may be) the Authority must consider any representations or objections which are duly made and not withdrawn. 10
 - (9) A notice under subsection (8) must be given—
 - (a) by publishing the notice in such manner as the Secretary of State or (as the case may be) the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications; and 15
 - (b) by serving a copy of the notice—
 - (i) on the Environment Agency;
 - (ii) if the notice is published by the Secretary of State, on the Authority; 20
 - (iii) if the notice is published by the Authority, on the Secretary of State;
 - (iv) if the application was forwarded by the Water Industry Commission for Scotland, on the Commission. 25
 - (10) If, within the time specified in the notice under subsection (8), the Secretary of State directs the Authority not to exclude or modify any standard condition, the Authority must comply with the direction.
 - (11) The Secretary of State or the Authority may not exclude any conditions, or make any modifications, under subsection (7) unless the Secretary of State or (as the case may be) the Authority is of the opinion that the exclusions or modifications are such that—
 - (a) the licence holder would not be unduly disadvantaged in competing with other holders of sewerage licences; and
 - (b) no other holder of a sewerage licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence). 35
 - (12) The modification under subsection (7) of part of a standard condition is not to prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Chapter.” 40
- 16 (1) Section 17I (modification of licences by agreement) is amended as follows.
- (2) For the title there is substituted “Modification of licences by agreement”.
 - (3) In subsection (1) (power of Authority to modify licence), for the words from “conditions of” to the end there is substituted “conditions of—
 - (a) a particular water supply licence, or 45
 - (b) a particular sewerage licence.”
 - (4) In subsection (2)(b) (modification not to cause undue disadvantage)—

- (a) in sub-paragraph (i), after “water supply licences” there is inserted “or, as the case may be, sewerage licences”;
- (b) in sub-paragraph (ii), after “a water supply licence” there is inserted “or, as the case may be, a sewerage licence”.
- (5) In subsection (4)(b) (persons to be served with notice of proposed modifications), in sub-paragraph (iv), at the beginning there is inserted “if the notice relates to a water supply licence,”. 5
- (6) In subsection (5) (direction not to modify a condition), the words “(after consulting the Assembly)” are repealed.
- (7) After subsection (5) there is inserted – 10
- “(5A) The Secretary of State is to consult the Welsh Ministers before giving a direction under subsection (5) in relation to a water supply licence.”
- 17 (1) Section 17J (general modification of standard conditions) is amended as follows.
- (2) For the title there is substituted “Modification of standard conditions”. 15
- (3) In subsection (1) (power of Authority to modify standard conditions), for the words from “may modify” to the end there is substituted “may modify –
- (a) the standard conditions of water supply licences, or
- (b) the standard conditions of sewerage licences.”
- (4) After subsection (1), there is inserted – 20
- “(1A) Modifications may relate to –
- (a) standard conditions contained in all water supply licences or sewerage licences, or
- (b) standard conditions contained in those water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations.” 25
- (5) In subsection (2) (power to make incidental and consequential modifications) –
- (a) for “retail licences or combined licences” there is substituted “water supply licences or sewerage licences”; 30
- (b) for “any licence of that description” there is substituted “any licence so affected”.
- (6) In subsection (4)(b) (persons to be served with notice of proposed modifications), in sub-paragraph (iv), at the beginning there is inserted “if the notice relates to a water supply licence,”. 35
- (7) In subsection (5) (direction not to modify a standard condition), the words “(after consulting the Authority)” are repealed.
- (8) After subsection (5) there is inserted –
- “(5A) The Secretary of State is to consult the Welsh Ministers before giving a direction under subsection (5) in relation to a water supply licence.” 40
- (9) In subsection (6) (modification conditional on views of relevant licence holders), for “retail licences or combined licences” there is substituted “water supply licences or sewerage licences”.

- (10) In subsection (8) (preconditions for modification of standard condition), in paragraph (c) after “a water supply licence” there is inserted “or, as the case may be, a sewerage licence”.
- (11) In subsection (10) (consultation with Welsh Ministers), after “subsection (6) above” there is inserted “in relation to the standard conditions of water supply licences”.
- (12) In subsection (12) (changed standard conditions to be used in new licences) –
- (a) for “retail licences or combined licences” there is substituted “water supply licences or sewerage licences”;
 - (b) in paragraph (a), for “licences of that description” there is substituted “water supply licences or, as the case may be, sewerage licences”;
 - (c) after paragraph (b), there is inserted –
“Where the Authority modifies the standard conditions of water supply licences or sewerage licences that grant particular authorisations or combinations of authorisations, paragraph (a) has effect only as regards licences granting the same authorisations or combinations of authorisations.”
- (13) In subsection (13) (meaning of “relevant licence holder”), for “retail licences or combined licences” there is substituted “water supply licences or sewerage licences or of such of those licences as grant a particular authorisation or combination of authorisations”.
- 18 (1) Section 17K (references to Competition Commission in relation to the modification of licences) is amended as follows.
- (2) For the title there is substituted “Modification references to Competition Commission”.
 - (3) In subsection (1) (reference of a particular licence), in paragraph (a)(i), for “a particular licence” there is substituted “a particular water supply or sewerage licence”.
 - (4) In subsection (2) (general matters that may be referred), in paragraph (a)(i), for “retail licences or combined licences” there is substituted “water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations”.
 - (5) In subsection (5)(b) (persons to be served with copy of reference or variation), in sub-paragraph (iv), at the beginning there is inserted “in a case relating to a water supply licence or licences”.
- 19 (1) Section 17N (reports on modification references) is amended as follows.
- (2) For the title there is substituted “Reports on modification references”.
 - (3) In subsection (10)(a) (persons to be served with report relating to a particular licence), in sub-paragraph (iv), at the beginning there is inserted “if the report relates to a water supply licence”.
 - (4) In subsection (11)(a) (persons to be served with report relating to a standard condition), in sub-paragraph (ii), at the beginning there is inserted “if the report relates to water supply licences”.

- (5) In subsection (12) (meaning of “relevant time”), in paragraph (a), after “Secretary of State and” there is inserted “, if the report relates to water supply licences, “.
- 20 (1) Section 17O (modification of licences following report) is amended as follows. 5
- (2) For the title there is substituted “Modification of licences following report”.
- (3) In subsection (2) (power to make incidental and consequential modifications), for “the standard conditions of retail licences or combined licences” there is substituted “–
- (a) the standard conditions of water supply licences or sewerage licences, or 10
- (b) the standard conditions of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations,”.
- (4) In subsection (5)(c)(iii), at the beginning there is inserted “in a case relating to a water supply licence or licences,”. 15
- (5) In subsection (10) (changed standard conditions to be used in new licences)–
- (a) for “retail licences or combined licences” there is substituted “water supply licences or sewerage licences”; 20
- (b) in paragraph (a), for “licences of that description” there is substituted “water supply licences or, as the case may be, sewerage licences”;
- (c) after paragraph (b), there is inserted –
- “Where the Authority modifies the standard conditions of water supply licences or sewerage licences that grant particular authorisations or combinations of authorisations, paragraph (a) has effect only as regards licences granting the same authorisations or combinations of authorisations.” 25
- 21 (1) Section 17P (Competition Commission’s power of veto following report) is amended as follows. 30
- (2) For the title there is substituted “Commission’s power of veto following report”.
- (3) In subsection (7)(b) (persons to be served with notice of modifications proposed), in sub-paragraph (v), at the beginning there is inserted “if the reference relates to water supply licences,”. 35
- (4) In subsection (10) (power to make incidental and consequential modifications), for “the standard conditions of retail licences or combined licences” there is substituted “–
- (a) the standard conditions of water supply licences or sewerage licences, or 40
- (b) the standard conditions of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations,”.
- (5) In subsection (11) (changed standard conditions to be used in new licences)– 45
- (a) for “retail licences or combined licences” there is substituted “water supply licences or sewerage licences”;

- (b) in paragraph (a), for “licences of that description” there is substituted “water supply licences or, as the case may be, sewerage licences”;
- (c) after paragraph (b), there is inserted –
“Where the Authority modifies the standard conditions of water supply licences or sewerage licences that grant particular authorisations or combinations of authorisations, paragraph (a) has effect only as regards licences granting the same authorisations or combinations of authorisations.” 5
- 22 (1) Section 17R (modification of licences by order under other enactments) is amended as follows. 10
- (2) For the title there is substituted “Modification by order under other enactments”.
- (3) In subsection (1) (power for the Office of Fair Trading, the Competition Commission and the Secretary of State to modify standard conditions in order to give effect to orders under the Enterprise Act 2002), for paragraphs (a) and (b) there is substituted – 15
- “(a) the conditions of a particular water supply or sewerage licence,
 (b) the standard conditions of water supply licences or sewerage licences, or 20
 (c) the standard conditions of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations,”.
- (4) In subsection (2) (identification of orders under the Enterprise Act 2002) – 25
- (a) in paragraph (a)(i), for “a retail licence or combined licence” there is substituted “a water supply licence or sewerage licence”;
- (b) in paragraph (a)(ii), for “a retail licence or combined licence” there is substituted “a water supply licence or sewerage licence”;
- (c) in paragraph (b), for “a retail licence or combined licence” there is substituted “a water supply licence or sewerage licence”. 30
- (5) In subsection (4) (changed standard conditions to be included in new licences and power to make incidental and consequential modifications of existing licences) –
- (a) for “subsection (1)(b) above” there is substituted “subsection (1)(b) or (c)”;
- (b) for “the standard conditions of retail licences or combined licences” there is substituted “the standard conditions of water supply licences or sewerage licences or of water supply licences or sewerage licences that grant a particular authorisation or combination of authorisations”. 40
- (6) In subsection (5) (publication of modifications), for “retail licences or combined licences” there is substituted “water supply licences or sewerage licences”.
- 23 (1) Section 18 (orders for securing compliance with certain provisions) is amended as follows. 45
- (2) In subsection (1) –
- (a) after “Part or” there is inserted “any person holding”;

- (b) in paragraph (a), after “that company” there is inserted “or that person”;
- (c) in paragraph (a)(i), after “appointment or” there is inserted “the person’s”;
- (d) in paragraph (b), after “that company” there is inserted “or that person”. 5
- (3) In subsection (1A) –
- (a) in paragraph (a)(i), for “a company” there is substituted “a person”;
- (b) in paragraph (b), for “any company” there is substituted “any person”; 10
- (c) in that paragraph, for “the company” there is substituted “the person”.
- (4) In subsection (2), after “Part or” there is inserted “any person holding”.
- (5) In subsection (6)(a), after “Part or” there is inserted “a person holding”.
- 24 In section 19 (exceptions to the duty to enforce), for “company”, in each place, there is substituted “person”. 15
- 25 In section 20 (procedure for enforcement orders), for “company to which”, in each place, there is substituted “person to whom”.
- 26 (1) Section 21 (validity of enforcement orders) is amended as follows.
- (2) In subsection (1) – 20
- (a) for “company in which” there is substituted “person to whom”;
- (b) for “company”, in the second place it occurs, there is substituted “person”.
- (3) In subsection (2), for “company” there is substituted “person”.
- 27 In section 22 (effect of enforcement order), in subsection (3) – 25
- (a) for “company”, in each place, there is substituted “person”;
- (b) for “it” there is substituted “the person”.
- 28 (1) Section 22A (penalties) is amended as follows.
- (2) In subsection (1) –
- (a) in paragraph (a)(ii), for “company” there is substituted “person”; 30
- (b) in paragraph (b), in the opening words for “company”, in both places, there is substituted “person”;
- (c) in the closing words, for “the company” there is substituted “that company or that person”.
- (3) In subsection (2) – 35
- (a) in paragraph (a)(ii), for “company” there is substituted “person”;
- (b) in paragraph (b), in the opening words for “company”, in both places, there is substituted “person”;
- (c) in the closing words, for “the company” there is substituted “that company or that person”. 40
- (4) In subsection (4), in the opening words, “for “company” there is substituted “person”.
- (5) In subsection (6) –

- (a) in the opening words, after “penalty” there is inserted “on a person”;
 - (b) in paragraph (a), for “company”, there is substituted “person”;
 - (c) in paragraph (d), for “company”, there is substituted “person”.
- (6) In subsection (7), for “company”, there is substituted “person on whom the penalty has been imposed”. 5
- (7) In subsection (8)(b), for “company”, there is substituted “person on whom the penalty is to be or has been imposed.”
- (8) In subsection (11), for the words from “10%” to “(determined” there is substituted “ –
- (a) 10% of the turnover of the company, or 10
 - (b) in a case where the person on whom the penalty is imposed is not a company, 10% of the turnover of the business of the person,
(determined”.
- 29 (1) Section 22C (time limits on the imposition of financial penalties) is amended as follows. 15
- (2) In subsection (1) –
- (a) in the opening words, after “penalty” there is inserted “on a person”;
 - (b) in paragraph (a), for “company” there is substituted “person”;
 - (c) in paragraph (b), for “company” there is substituted “person”. 20
- (3) In subsection (2), in the opening words –
- (a) after the first “penalty” there is inserted “on a person”;
 - (b) for “company” there is substituted “person”.
- 30 In section 22E (appeals), for “company”, in each place, there is substituted “person”. 25
- 31 In section 22F (recovery of penalties), for “company” there is substituted “person”.
- 32 (1) Section 23 (meaning and effect of special administration orders) is amended as follows.
- (2) In subsection (1), for “a qualifying licensed water supplier” there is substituted “a qualifying water supply licensee or a qualifying sewerage licensee”. 30
- (3) In subsection (2A) –
- (a) for “a qualifying licensed water supplier” there is substituted “a qualifying water supply licensee”; 35
 - (b) for the words from “the introduction or” to “may” there is substituted “ –
- (i) the introduction or introductions of water mentioned in subsection (7),
 - (ii) the company’s retail infrastructure authorisation, or 40
 - (iii) the company’s network infrastructure authorisation,
- may”.

- (4) After subsection (2A) there is inserted –
- “(2AA) The purposes of a special administration order made in relation to a company which is a qualifying sewerage licensee must be –
- (a) the transfer to another company or companies, as a going concern, of so much of the company’s undertaking as it is necessary to transfer in order to secure that the activities relating to –
 - (i) the removal or removals of matter mentioned in subsection (9),
 - (ii) the company’s retail infrastructure authorisation, or
 - (iii) the company’s network infrastructure authorisation, may be properly carried on, and
 - (b) the carrying on of those activities pending the making of the transfer.”
- (5) In subsection (2B)(b), for “or (2A)(a)”, in both places, there is substituted “, (2A)(a) or (2AA)(a)”. 15
- (6) In subsection (2C), for “and (2A)(b)” there is substituted “, (2A)(b) and (2AA)(b)”. 15
- (7) In subsection (4)(b), for the words from “relating” to “below” there is substituted “mentioned in subsection (2A)(a) or (2AA)(a)”. 20
- (8) In subsection (6) –
- (a) in the opening words, for “licensed water supplier”, in both places, there is substituted “water supply licensee”;
 - (b) for paragraphs (a) and (b) there is substituted –
 - “(a) it is the holder of a water supply licence giving it a wholesale or supplementary authorisation (within the meaning of Chapter 1A) and the condition in subsection (7) is satisfied in relation to it, 25
 - (b) it is the holder of a water supply licence giving it a retail infrastructure authorisation (within the meaning of Chapter 1A) and is permitted under section 66CA to take water from a water undertaker’s supply system (within the meaning of Chapter 1A), or 30
 - (c) it is the holder of a water supply licence giving it a network infrastructure authorisation (within the meaning of Chapter 1A) and is permitted under section 66CB to take water from and introduce water into a water undertaker’s supply system (within the meaning of Chapter 1A).” 35
- (9) After subsection (6) there is inserted – 40
- “(7) The condition in this subsection is that –
- (a) the introduction of water by the licence holder which is permitted under section 66B or 66C is designated as a strategic supply under section 66G, or
 - (b) the introductions of water by the licence holder which are permitted under section 66B or 66C are designated as a collective strategic supply under section 66H.” 45

- (10) After subsection (7) (as inserted by sub-paragraph (9)) there is inserted –
- “(8) For the purposes of this section, sections 24 to 26 and Schedule 2, a sewerage licensee is a qualifying sewerage licensee if –
- (a) it is the holder of a sewerage licence giving it a wholesale or disposal authorisation (within the meaning of Chapter 1A of this Part) and the condition in subsection (9) is satisfied in relation to it, 5
 - (b) it is the holder of a sewerage licence giving it a retail infrastructure authorisation (within the meaning of Chapter 1A) and is permitted under section 117D to discharge matter into a sewerage undertaker’s sewerage system (within the meaning of Chapter 1A), or 10
 - (c) it is the holder of a sewerage licence giving it a network infrastructure authorisation (within the meaning of Chapter 1A) and is permitted under section 117E to remove matter from and discharge matter into a sewerage undertaker’s sewerage system (within the meaning of Chapter 1A). 15
- (9) The condition in this subsection is that –
- (a) the removal of matter by the licence holder which is permitted under section 117C or 117F is designated as strategic sewerage provision under section 117M, or 20
 - (b) the removals of matter by the licence holder which are permitted under section 117C or 117F are designated as collective strategic sewerage provision under section 117N.”
- 33 (1) Section 24 (special administration orders made on special petitions) is amended as follows. 25
- (2) In subsection (1A) –
- (a) in paragraphs (a) and (b), the words “(after consulting the Assembly)” are repealed;
 - (b) in paragraph (b), after “the Assembly”, there is inserted “by”; 30
 - (c) in the words following paragraph (b), for “qualifying licensed water supplier” there is substituted “qualifying water supply licensee or qualifying sewerage licensee”.
- (3) After subsection (1A) there is inserted –
- “(1B) Before presenting a petition under subsection (1A) in relation to a qualifying water supply licensee whose licence gives it a supplementary authorisation, the Secretary of State or the Authority (as the case may be) must consult the Welsh Ministers.” 35
- (4) In subsection (2) –
- (a) in paragraph (bb), for “qualifying licensed water supplier” there is substituted “qualifying water supply licensee”; 40
 - (b) after paragraph (bb) there is inserted –
 - “(bc) in the case of a company which is a qualifying sewerage licensee, that –
 - (i) action taken by the company has caused a contravention by a sewerage undertaker of any principal duty; and 45

- (ii) that action is serious enough to make it inappropriate for the company to continue to hold its licence;”;
- (c) in paragraph (d), for “qualifying licensee water supplier” there is substituted “qualifying water supply licensee or a qualifying sewerage licensee”. 5
- (5) In subsection (7)(b), for “qualifying licensed water supplier” there is substituted “qualifying water supply licensee or a qualifying sewerage licensee”.
- 34 In section 25 (power to make special administration order on winding-up petition) for “qualifying licensed water supplier”, in both places, there is inserted “qualifying water supply licensee or a qualifying sewerage licensee”. 10
- 35 In section 26 (restrictions on voluntary winding up and insolvency proceedings), in subsection (1), for “qualifying licensed water supplier” there is inserted “qualifying water supply licensee or a qualifying sewerage licensee”. 15
- 36 (1) Section 27 (general duty of Authority to keep matters under review) is amended as follows.
- (2) In subsection (1)(b), for “licensed water suppliers” there is substituted “water supply licensees or sewerage licensees”. 20
- (3) In subsection (2) –
- (a) in paragraph (aa), for “companies” there is substituted “persons”;
- (b) in paragraph (b), after “company” there is inserted “or person”.
- (4) In subsection (4) – 25
- (a) in paragraph (c), for the words from “retail” to “Part)” there is substituted “the authorisations or combinations of authorisations given by licences under Chapter 1A of this Part (see sections 17A and 17BA)”;
- (b) in paragraph (d), for “company” there is substituted “person”. 30
- 37 In section 27A (establishment of the Council and committees), in subsection (13), in the definition of “the interests of consumers” –
- (a) in paragraph (a), for “licensed water suppliers” there is substituted “water supply licensees”;
- (b) in paragraph (b), for “by sewerage undertakers” there is substituted “either by sewerage undertakers or by sewerage licensees acting in their capacity as such”. 35
- 38 (1) Section 27C (the interests of consumers) is amended as follows.
- (2) In subsection (1) –
- (a) the “and” after paragraph (d) is repealed; 40
- (b) in paragraph (e), for the words from “not eligible” to the end there is substituted “household premises (as defined in section 17C)”;
- (c) at the end of paragraph (e) there is inserted “; and
- (f) customers, of companies holding an appointment under Chapter 1 of Part 2 of this Act, whose premises are below the consumption threshold and in the area 45

- of a relevant undertaker whose area is wholly or mainly in Wales,”.
- (3) In subsection (2), for the words from “not eligible” to “the total quantity” there is substituted “below the consumption threshold if the total quantity”.
- 39 In section 27E (provision of advice and information to public authorities), in subsection (1), for “licensed water suppliers” there is substituted “water supply licensees, sewerage licensees”. 5
- 40 (1) Section 27H (provision of information to the Council) is amended as follows.
- (2) In subsection (1) –
- (a) the “or” at the end of paragraph (b) is repealed; 10
 - (b) in paragraph (c) for “a licensed water supplier” there is substituted “a water supply licensee, or”;
 - (c) after paragraph (c) there is inserted –
“(d) a sewerage licensee,”.
- (3) In subsections (2), (3) and (4), after “body”, in each place, there is inserted “or person”. 15
- (4) In subsection (4) –
- (a) for “it” there is substituted “the body or person”;
 - (b) for “its” there is substituted “the”.
- 41 (1) Section 27K (sections 27H to 27J: supplementary) is amended as follows. 20
- (2) In subsection (2), for “or a licensed water supplier” there is substituted “, a water supply licensee or a sewerage licensee”.
- (3) In subsection (5), for “and a licensed water supplier” there is substituted “, a water supply licensee and a sewerage licensee”.
- 42 (1) Section 29 (consumer complaints) is amended as follows. 25
- (2) In subsection (1) –
- (a) for “or a licensed water supplier” there is substituted “, a water supply licensee or a sewerage licensee”;
 - (b) for “by that licensed water supplier” there is substituted “by that water supply licensee or that sewerage licensee”. 30
- (3) In subsection (5)(a), for the words from “by a licensed water supplier” to “Wales” there is substituted “–
- “(i) by a water supply licensee using the supply system of a water undertaker whose area is wholly or mainly in Wales, or 35
 - (ii) by a sewerage licensee using the supply system of a sewerage undertaker whose area is wholly or mainly in Wales”.
- (4) In subsections (8)(a) and (b) and (9), for “or the licensed water supplier” there is substituted “, the water supply licensee or the sewerage licensee”. 40
- 43 For the heading to Chapter 1 of Part 3 (before section 37) there is

- substituted –
- “GENERAL DUTIES OF WATER UNDERTAKERS ETC”.
- 44 In section 37A (water resources management plans: preparation and review) –
- (a) in subsection (3)(b), for “licensed water suppliers” there is substituted “water supply licensees”; 5
- (b) in subsection (8)(d) for “licensed water supplier” there is substituted “water supply licensee”.
- 45 In section 37C (water resources management plans: provision of information) – 10
- (a) for “licensed water supplier”, in each place, there is substituted “water supply licensee”;
- (b) in the closing words to subsection (3), for “licensed water supplier’s” there is substituted “water supply licensee’s”.
- 46 In section 37D (water resources management plans: supplementary), in subsection (3)(b), for “licensed water supplier” there is substituted “water supply licensee”. 15
- 47 In section 38B (publication of statistical information about complaints) –
- (a) in subsection (1), for “licensed water suppliers” there is substituted “water supply licensees”; 20
- (b) in subsection (2), for “licensed water suppliers” there is substituted “water supply licensees”.
- 48 (1) Section 39A (information to be given to customers about performance) is amended as follows.
- (2) In subsections (1) and (2A), for “licensed water suppliers”, in both places, there is substituted “water supply licensees”. 25
- (3) After subsection (1) there is inserted –
- “(1A) Each water supply licensee must, in such form and manner as the Authority may direct, take steps to inform the licensee’s customers of – 30
- (a) the standards of overall performance established under section 38ZA(1) which are applicable to that licensee;
- (b) that licensee’s level of performance as regards those standards.”
- (4) In subsection (2), after “any such direction” there is inserted “under subsection (1) or (1A)”. 35
- (5) In subsection (3) for “licensed water supplier” there is substituted “water supply licensee”.
- 49 In section 39B (drought plans: preparation and review) –
- (a) in subsection (4)(b), for “licensed water suppliers” there is substituted “water supply licensees”; 40
- (b) in subsection (7)(d), for “licensed water supplier” there is substituted “water supply licensee”.
- 50 In section 39C (drought plans: provision of information) –

- (a) for “licensed water supplier”, in each place, there is substituted “water supply licensee”;
 - (b) in the closing words to subsection (3), for “licensed water supplier’s” there is substituted “water supply licensee’s”.
- 51 In section 42 (financial conditions for compliance with the duty in section 41), subsection (7) (terms defined in sections 43 and 43A) is repealed. 5
- 52 Sections 43 and 43A (calculations for the purpose of section 42) are repealed.
- 53 Section 48 (interest on sums provided by way of security) is repealed.
- 54 In section 51D (prohibition on connection without adoption), after subsection (1) there is inserted – 10
 - “(1A) Subsection (1) does not apply where the water main or service pipe forms part of –
 - (a) the retail infrastructure of a water supply licensee (as defined in Schedule 2A) that is to be used for the purposes of the licensee’s retail infrastructure authorisation, or 15
 - (b) the network infrastructure of a water supply licensee (as defined in Schedule 2A) that is to be used for the purposes of the licensee’s network infrastructure authorisation.”
- 55 (1) Section 52 (domestic supply duty) is amended as follows.
 - (2) In subsection (4A) (exclusion of certain premises), in paragraph (c), at the beginning, there is inserted “in the case of premises to be supplied using the supply system of a water undertaker whose area is wholly or mainly in Wales,”. 20
- 56 (1) Section 61 (disconnections for non-payment of charges) is amended as follows. 25
 - (2) In subsection (1), after “cut off a supply of water to any premises,” there is inserted “if subsection (1ZA) or (1ZB) applies.”
 - (1ZA) This subsection applies”.
 - (3) After subsection (1ZA) (as inserted by sub-paragraph (2)) there is inserted –
 - “(1ZB) This subsection applies if a water supply licensee has requested the undertaker to disconnect the service pipe or otherwise cut off the supply of water as mentioned in subsection (1), in circumstances where the occupier of the premises in question – 30
 - (a) is liable (whether as occupier or under any agreement with the water supply licensee) to pay charges due to the water supply licensee in respect of the supply of water to the premises, and 35
 - (b) has failed to do so before the end of the period of seven days beginning with the day after the occupier is served with notice requiring such payment.” 40
 - (4) In subsection (2)(a), for “subsection (1)” there is substituted “subsection (1ZA)”.
 - (5) In subsection (4) –
 - (a) the words “, from the person in respect of whose liability the power is exercised,” are repealed; 45

- (b) at the end there is inserted “ –
- (a) from the person in respect of whose liability the power is exercised, in a case where the power is exercised in the circumstances mentioned in subsection (1ZA); 5
 - (b) from the water supply licensee who made the request, in a case where the power is exercised in the circumstances mentioned in subsection (1ZB).”
- 57 In section 63 (general duties of undertakers with respect to disconnections), after subsection (3) there is inserted – 10
- “(3A) A water undertaker is not guilty of an offence under subsection (3) where it disconnects a service pipe, or otherwise cuts off a supply of water under section 61 in the circumstances mentioned in section 61(1ZB) (request from water supply licensee).”
- 58 (1) Section 63AA (supply by licensed water supplier: domestic supply duty) is amended as follows. 15
- (2) In the title, for “licensed water supplier” there is substituted “water supply licensee”.
 - (3) In subsection (1), for “licensed water supplier” there is substituted “water supply licensee”. 20
- 59 (1) Section 63AB (supply by licensed water supplier: non-domestic supply) is amended as follows.
- (2) In the title, for “licensed water supplier” there is substituted “water supply licensee”.
 - (3) In subsection (1)(a), for “licensed water supplier” there is substituted “water supply licensee”. 25
- 60 (1) Section 63AC (interim duty of water undertaker: domestic and non-domestic supply) is amended as follows.
- (2) In subsections (1)(a) and (2), for “licensed water supplier” there is substituted “water supply licensee”. 30
- 61 In the italic heading preceding section 68, for “licensed water suppliers” there is substituted “water supply licensees”.
- 62 (1) Section 68 (duties with respect to water quality) is amended as follows.
- (2) In the title, for “licensed water suppliers” there is substituted “water supply licensees”. 35
 - (3) After subsection (1), there is inserted –
 - “(1ZA) It is the duty of a water supply licensee where –
 - (a) its retail infrastructure is used in accordance with its retail infrastructure authorisation, or
 - (b) its network infrastructure is used in accordance with its network infrastructure authorisation, 40
 for the purpose of supplying water to any premises for domestic or food production purposes, to ensure the matters specified in paragraphs (a) and (b) of subsection (1).

This section and section 69 apply, in relation to the duty of a water supply licensee, whether or not the water supplied using the infrastructure of the licensee is supplied by the licensee.”

- (4) In subsection (1A) –
- (a) in the opening words, for “licensed water supplier” there is substituted “water supply licensee”; 5
 - (b) in paragraph (a), for “its retail authorisation” there is substituted “the licensee’s retail authorisation or restricted retail authorisation”;
 - (c) in paragraph (b), for “that supplier” there is substituted “that licensee”; 10
 - (d) in paragraph (b), for “its retail authorisation” there is substituted “the licensee’s retail authorisation or restricted retail authorisation”;
 - (e) the words following paragraph (b) are repealed.
- (5) In subsection (2), for the words from “where a water undertaker’s supply system” to the end there is substituted “any water supplied as mentioned in subsection (1), (1ZA) or (1A) is not to be regarded as unwholesome at the time of supply where it has ceased to be unwholesome only after leaving the relevant pipes.” 15
- (6) For subsection (3) there is substituted –
- “(3) For the purposes of any duty under subsection (1), (1ZA) or (1A), where any water supplied as mentioned in those subsections would not otherwise be regarded as unwholesome at the time of supply, that water is to be regarded as unwholesome at that time if –
- (a) it has ceased to be wholesome after leaving the relevant pipes but while in a pipe which is subject to water pressure from a water main, or from a water supply licensee’s retail infrastructure (as the case may be), or which would be so subject but for the closing of some valve, and 25
 - (b) it has so ceased in consequence of the failure of the person subject to the duty, before the water is supplied, to ensure that such steps are taken as may be prescribed for the purpose of securing the elimination, or reduction to a minimum, of any prescribed risk that the water would cease to be unwholesome after leaving the relevant pipes.” 30
- (7) Subsection (3A) is repealed. 35
- (8) In subsection (3B) –
- (a) for “subsection (3A) above” there is substituted “subsection (3)”;
 - (b) for the words from “the pipes” to the end there is substituted “ –
 - (a) in a case where a water supply licensee’s retail infrastructure is used for the purposes of supplying the water in question, the pipes of the licensee which form part of that infrastructure; 40
 - (a) if paragraph (a) does not apply, the pipes of the water undertaker whose supply system is used for the purposes of supplying the water in question.” 45
- (9) In subsection (5), for “licensed water supplier” there is substituted “water supply licensee”.

- (10) After subsection (5) there is inserted –
- “(6) References in this section to –
- (a) a retail authorisation, a restricted retail authorisation, a retail infrastructure authorisation or a network infrastructure authorisation, or
- (b) retail infrastructure or network infrastructure,
- are to be construed in accordance with Schedule 2A.
- (7) In this section “prescribed” means, in relation to a water undertaker whose area is wholly or mainly in Wales or a water supply licensee so far as relating to licensed activities using the supply system of such a water undertaker, prescribed by regulations made by the Welsh Ministers by statutory instrument, which is subject to annulment in pursuance of a resolution of the Assembly.”
- 63 (1) Section 69 (regulations for preserving water quality) is amended as follows.
- (2) In subsections (1), (2), (5)(aa), (6)(b) and (c) and (7)(a)(ii) and (b), for “licensed water supplier”, in each place, there is substituted “water supply licensee”.
- (3) In subsections (3) and (4)(a) and (b), for “licensed water suppliers”, in each place, there is substituted “water supply licensees”.
- (4) In subsection (5)(a) –
- (a) after “water undertaker” there is inserted “or water supply licensee”;
- (b) after “supply system” there is inserted “or (as the case may be) using that licensee’s retail infrastructure or network infrastructure.”
- (5) In subsection (5)(aa), for “that supplier” there is substituted “that licensee”.
- (6) In subsections (5)(b) and (6)(b), for “or supplier”, in both places, there is substituted “or licensee”.
- (7) In subsection (7)(b), for the words from “made by that supplier” to the end there is substituted “–
- (a) made by that licensee using a water undertaker’s supply system or a water supply licensee’s retail infrastructure or network infrastructure, or
- (b) made by a water undertaker or water supply licensee using the licensee’s retail infrastructure or network infrastructure.”
- (8) After subsection (7) there is inserted –
- “(8) References in this section to retail infrastructure or network infrastructure are to be construed in accordance with Schedule 2A.”
- 64 (1) Section 70 (offence of supplying water unfit for human consumption) is amended as follows.
- (2) In subsection (1A) –
- (a) the “and” at the end of paragraph (a) is repealed;
- (b) after that paragraph there is inserted –
- “(aa) any water supply licensee whose retail infrastructure is also used for the purpose of supplying the water; and”.

- (3) In subsection (3)(b), for “primary water undertaker’s pipes” there is substituted “relevant pipes”.
- (4) In subsection (3B), for “undertaker’s pipes” there is substituted “relevant pipes”.
- (5) After subsection (3B) there is inserted – 5
- “(3C) In this section “relevant pipes” means –
- (a) in a case where a water supply licensee’s retail infrastructure is used for the purposes of supplying the water in question, the pipes of the licensee which form part of that infrastructure, or 10
- (b) if paragraph (a) does not apply, the pipes of the primary water undertaker.”
- 65 In section 72 (contamination of water sources), in subsection (5)(c) for “licensed water supplier” there is substituted “water supply licensee”.
- 66 In section 73 (offences of contaminating, wasting and misusing water etc), in subsection (1) – 15
- (a) for “licensed water supplier” there is substituted “water supply licensee”.
- (b) in paragraph (b), for “supplier” there is substituted “licensee”.
- 67 (1) Section 74 (regulations for preventing contamination, waste etc and with respect to water fittings) is amended as follows. 20
- (2) In subsection (1)(a)(i), after “a water undertaker” there is inserted “or in the retail infrastructure of a water supply licensee”.
- (3) In subsection (1)(b) and (d), for “licensed water supplier”, in each place, there is substituted “water supply licensee”. 25
- (4) In subsection (1)(c) –
- (a) after “a water undertaker” there is inserted “or the retail infrastructure of a water supply licensee”;
- (b) for “a licensed water supplier” there is substituted “that or another water supply licensee”. 30
- (5) After subsection (7) there is inserted –
- “(7A) In subsection (1), references to retail infrastructure are to be construed in accordance with Schedule 2A.”
- 68 (1) Section 75 (power to prevent damage and to take steps to prevent contamination, waste etc) is amended as follows. 35
- (2) In subsection (1A) –
- (a) for “licensed water supplier” there is substituted “water supply licensee”;
- (b) in paragraph (b), after “the undertaker” there is inserted “or in the retail infrastructure of a water supply licensee”; 40
- (c) in paragraph (b), for “or main” there is substituted “, main or retail infrastructure”;
- (d) in paragraph (c), after “other pipe” there is inserted “or such retail infrastructure”.

- (3) In subsection (11)(b), for “licensed water supplier” there is substituted “water supply licensee”.
- (4) For subsection (12) there is substituted –
- “(12) In subsection (1A) –
- (a) the reference to the supply system of a water undertaker is to be construed in accordance with section 17B; 5
- (b) references to retail infrastructure are to be construed in accordance with Schedule 2A.”
- 69 In section 76 (temporary bans on use) –
- (a) in subsection (1), for “by it” there is substituted “by means of its supply system”; 10
- (b) after subsection (7) there is inserted –
- “(8) The reference in subsection (1) to the supply system of a water undertaker is to be construed in accordance with section 17B.” 15
- 70 (1) Section 78 (local authority functions in relation to undertakers’ supplies) is amended as follows.
- (2) In subsection (1)(a), for “licensed water supplier” there is substituted “water supply licensee”.
- (3) After subsection (1) there is inserted – 20
- “(1A) Where water supplied as mentioned in subsection (1)(a) is taken from the undertaker’s water supply system and conveyed to the premises in question by means of a water supply licensee’s retail infrastructure, it is also to be the duty of the local authority to notify that licensee of anything appearing to the authority to suggest –
- (a) that any water so supplied to any premises in the area of that authority is, has been or is likely to become unwholesome or (so far as any such premises are concerned) insufficient for domestic purposes, 25
- (b) that the unwholesomeness or insufficiency of any such supply is, was or is likely to be such as to cause a danger to life or health, or 30
- (c) that the duty imposed on that licensee by virtue of section 68(1ZA) to ensure the matter mentioned in section 68(1)(b) is being, has been, or is likely to be so contravened as to affect any supply of water to premises in that area.” 35
- (4) In subsection (2) –
- (a) after “water undertaker” there is inserted “or water supply licensee (as the case may be)”; 40
- (b) after “the undertaker” there is inserted “or the licensee (as the case may be)”.
- (5) In subsection (3), for “17B(5)” there is substituted “17B”.
- (6) After subsection (3) there is inserted –
- “(4) In subsection (1A), the reference to retail infrastructure is to be construed in accordance with Schedule 2A.” 45

- 71 (1) Section 86 (assessors for the enforcement of water quality) is amended as follows.
- (2) In subsections (2)(a)(i), (3), (4)(c)(i), and (6), for “licensed water supplier”, in each place, there is substituted “water supply licensee”.
- (3) In subsection (4)(c)(i), for “or supplier” there is substituted “or licensee”. 5
- (4) In subsection (6), for “it” there is substituted “that person”.
- 72 In section 87 (fluoridation of water supplies at request of relevant authorities), in subsections (2)(b) and (3)(b), for “licensed water supplier” there is substituted “water supply licensee”.
- 73 In section 87C (fluoridation arrangements: compliance), in subsection (4)(b), for “licensed water supplier” there is substituted “water supply licensee”. 10
- 74 In section 90 (indemnities in respect of fluoridation), in subsection (2) –
- (a) for “licensed water supplier” there is substituted “water supply licensee”;
- (b) for “it”, in both places, there is substituted “the licensee”. 15
- 75 In section 93 (interpretation of Part 3), in subsection (1), in the definition of “private supply”, for “licensed water supplier” there is substituted “water supply licensee”.
- 76 (1) In section 93A (duty to promote the efficient use of water) –
- (a) in subsections (1), (2) and (3), for “licensed water supplier”, in each place, there is substituted “water supply licensee”;
- (b) in subsections (1) and (3), for “its customers” there is substituted “that person’s customers”. 20
- 77 (1) Section 93B (power of Authority to impose requirements on water undertakers) is amended as follows. 25
- (2) In subsections (1), (2), (3), (4), (5) and (6), for “licensed water supplier”, in each place, there is substituted “water supply licensee”.
- (3) In subsection (1), for “its performance of its duty” there is substituted “the performance of that undertaker’s or licensee’s duty”.
- (4) In subsections (2), (4), (5) and (6), for “or supplier”, in each place, there is substituted “or licensee”. 30
- (5) In subsection (2), for “its duty” there is substituted “the undertaker’s or licensee’s duty”.
- (6) In subsections (3) and (6), for “its customers”, in each place, there is substituted “that person’s customers”. 35
- 78 (1) Section 93C (publicity of requirements imposed under section 93B) is amended as follows.
- (2) In subsection (1) –
- (a) for “licensed water supplier” there is substituted “water supply licensee”;
- (b) for “or supplier’s” there is substituted “or licensee’s”. 40
- (3) In subsection (2)(b), for “or supplier” there is substituted “or licensee”.

- 79 (1) Section 93D (information as to compliance with requirements under section 93B) is amended as follows.
- (2) In subsection (1), (2) and (3), for “licensed water supplier”, in each place, there is substituted “water supply licensee”.
- (3) In subsection (1), (2)(b) and (3), for “or supplier”, in each place, there is substituted “or licensee”. 5
- (4) In subsection (3), for “or supplier’s” there is substituted “or licensee’s”.
- 80 For the heading to Chapter 1 of Part 4 (before section 94) there is substituted –
- “GENERAL FUNCTIONS OF SEWERAGE UNDERTAKERS ETC”. 10
- 81 In section 99 (financial conditions for compliance with the duty in section 98), subsection (7) (terms defined in sections 100 and 100A) is repealed.
- 82 Sections 100 and 100A (calculations for the purposes of section 99) are repealed.
- 83 In section 101B (power to provide lateral drain following provision of public sewer) – 15
- (a) in subsection (3), for “water” there is substituted “sewerage”;
- (b) in subsection (4), the “or” following paragraph (a) is repealed.
- 84 In section 154A (financial assistance to reduce charges of relevant undertakers and water supply licensees) – 20
- (a) in subsection (1)(a), (6)(b), (7)(b) and (8), for “licensed water supplier”, in each place, there is substituted “water supply licensee”;
- (b) in subsections (1), (6) and (7), the “or” following paragraph (a) is repealed;
- (c) in subsections (1)(b) and (7)(b), for “its”, in each place, there is substituted “the licensee’s”; 25
- (d) at the end of subsection (1)(b), there is inserted “, or
- (c) a sewerage licensee that serves premises in accordance with the licensee’s retail authorisation using the sewerage system of an English undertaker.”; 30
- (e) at the end of subsection (6)(b), there is inserted “, or
- (c) to a sewerage licensee by means of an arrangement made by the Secretary of State with an English undertaker that is a sewerage undertaker.”; 35
- (f) in subsection (7)(a), for “a licensed water supplier” there is substituted “a water supply licensee or a sewerage licensee”;
- (g) at the end of subsection (7)(b), there is inserted “, or
- (c) a person whose premises are served by a sewerage licensee in accordance with the licensee’s retail authorisation using the undertaker’s sewerage system.”; 40
- (h) in subsection (8), for “of a licensed water supplier” there is substituted “of a water supply licensee or of a sewerage licensee”;
- (i) in subsection (8) for “section 17A(2)” there is substituted “Schedule 2A or Schedule 2B, as the case may be,”. 45

- 85 In section 164 (agreements for works with respect to water sources), in subsection (2) (notice to be given before agreeing to works entailing a discharge into a watercourse), for “the NRA” there is substituted “the Environment Agency”.
- 86 (1) Section 175 (offence of tampering with meter) is amended as follows. 5
- (2) In subsection (1) (offence of tampering) for “or licensed water supplier” there is substituted “, water supply licensee or sewerage licensee”.
- (3) In subsection (3) (meaning of “appropriate consent”) –
- (a) for paragraph (b) there is substituted –
- “(b) if the meter is used by one water supply licensee, the consent of that licensee; 10
- (ba) if the meter is used by one sewerage licensee, the consent of that licensee;”;
- (b) in paragraph (c), for sub-paragraph (ii) there is substituted –
- “(ii) a water supply licensee; 15
- (iii) a sewerage licensee.”.
- 87 In section 179 (vesting of works in undertaker), in subsection (1A) (when persons may agree to vest pipes etc in a person other than the undertaker), the words from “but no agreement” to the end are repealed.
- 88 (1) Section 219 (general interpretation) is amended as follows. 20
- (2) In subsection (1) –
- (a) in the definition of “water main” –
- (i) for “licensed water supplier” there is substituted “water supply licensee”;
- (ii) for “or supplier” there is substituted “or licensee”; 25
- (b) the following are inserted at the appropriate place –
- ““charging rules” means rules issued under section 144ZA;”;
- ““sewerage licensee” is to be construed in accordance with section 17BA(7);”;
- ““water supply licensee” is to be construed in accordance with section 17A(8);”;
- (c) the definition of “licensed water supplier” is repealed. 30

Water Act 2003 (c. 37)

- 89 (1) Section 58 of the Water Act 2003 (fluoridation of water supplies) is amended as follows, to the extent that it is not in force on the day on which paragraphs 72 to 74 come into force. 35
- (2) In subsection (1) –
- (a) in the inserted section 87 of the Water Industry Act 1991 (fluoridation of water supplies at request of relevant authorities), in subsections (2)(b) and (3)(b), for “licensed water supplier” there is substituted “water supply licensee; 40
- (b) in the inserted section 87C of the Water Industry Act 1991 (fluoridation arrangements: compliance), in subsection (4)(b), for “licensed water supplier” there is substituted “water supply licensee”. 45

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- (3) In subsection (6), in the inserted section 90 of the Water Industry Act 1991 (indemnities in respect of fluoridation), in subsection (2) –
- (a) for “licensed water supplier” there is substituted “water supply licensee”;
 - (b) for “it”, in both places, there is substituted “the licensee”.

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Flood and Water Management Act 2010 (c. 29)

- 90 The Flood and Water Management Act 2010 is amended as follows.
- 91 In section 44 (social tariffs in charges schemes), subsection (3) is repealed.

SECTION 5 – EXPLANATORY NOTES

WATER BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Water Bill as published in draft on 10 July 2012. They have been prepared by the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and help to inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Water Bill enables the Government to implement proposals set out in *Water for Life CM 8230* (the “*Water White Paper*”) published by the Government on 8 December 2011.
4. The Water Bill amends the Water Industry Act 1991 (WIA) by expanding the current water supply licensing regime and introducing similar provisions for sewerage services.
5. The Bill also makes a number of changes to the Act so that new entrants will be able to join the market more easily. Our intention is that they have greater opportunities to compete and clearer parameters to work within, with the possibility of more effective support from the regulator (Ofwat²⁵). The Bill also allows for the Government to implement its intention that all non-household customers in areas of water undertakers based wholly or mainly in England will be allowed to switch supplier.
6. To support these reforms, the Bill provides Ofwat with sufficient powers to regulate the water and sewerage market as competition develops. We will also take this opportunity to reduce and simplify regulatory and administrative burdens to further increase efficiency in the water sector.
7. This Bill also allows for the creation of a single set of regulations covering the existing scope of the environmental permitting regulations and new regulations for abstraction licences, flood defence consents and fish pass approvals. This allows operators to apply for one rather than multiple permits.

25 In the Water Industry Act 1991 the Water Services Regulation Authority (more commonly known as Ofwat) is referred to as “the Authority”.

OVERVIEW OF THE STRUCTURE OF THE BILL

8. In Part 1, clauses 1 to 11 and Schedules 1 to 5 cover the expansion of the water supply licensing market, arrangements between water undertakers and with licensed water suppliers and the introduction of sewerage licences.
9. Clauses 12 and 13 cover changes to the special merger regime for the water sector.
10. Clauses 14 to 23 cover Ofwat's regulation of water and sewerage undertakers and licence holders.
11. In Part 2, clauses 24 and 25 cover changes to the water resources management regime.
12. In Part 3, clauses 26 to 28 and Schedule 6 cover reforms to environmental regulation which will permit the extension of the environmental permitting regime.

TERRITORIAL EXTENT AND APPLICATION

13. The Bill extends to England and Wales only.
14. Significant parts of water industry and environment law are devolved in relation to Wales. The areas of appointment of water and sewerage undertakers do not follow the national boundary. Under section 108 of, and paragraph 19 of Schedule 7 to, the Government of Wales Act 2006, the National Assembly for Wales has legislative competence (amongst other things) in relation to "water supply" and "water resources management (including reservoirs)" in relation to Wales. But there is no legislative competence in relation to sewerage services, the "appointment and regulation of any water undertaker whose area is not wholly or mainly in Wales" or the licensing and regulation of licensed water suppliers, (apart from regulation of licensed activities using the supply systems of water undertakers wholly or mainly in Wales). Under various enactments, the Welsh Ministers have executive competence in relation to water and sewerage undertakers wholly or mainly in Wales and a range of other matters.
15. In essence, the Bill gives the Welsh Ministers separate powers to commence the new licensing arrangements in relation to the Welsh parts of the areas of water and sewerage undertakers wholly or mainly in Wales. Until then, in those areas, the existing water supply licensing regime will continue to apply, although the new approach to arrangements between licensees and undertakers has effect in relation to all of England and Wales. The Welsh Ministers can apply the provisions in respect of removing the threshold requirement for retail water supply under clause 3; removing the non-household restrictions for retail licensees serving premises via retail infrastructure under clause 6; and changes to the inset regime under clause 11, in the Welsh parts of water undertaker areas wholly or mainly in Wales. All other provisions in the Bill apply across the whole of England and Wales.
16. Water industry and environment law are wholly devolved in relation to Scotland.

17. We aim to establish a cross-border market in water and sewerage retail services. To do this we will introduce a fast track licensing procedure using new powers to make secondary legislation under the WIA. Under the proposed secondary legislation, applications for water services or sewerage services licences to the Water Industry Commission for Scotland (WICS) under section 6 of the Water Services etc. (Scotland) Act 2005 would be treated as applications for a retail authorisation or a restricted retail authorisation to Ofwat under the WIA as soon as the application is forwarded by WICS to Ofwat. The Bill also grants Ofwat a power to co-operate with WICS in relation to the licensing and regulation of retail licences granted by WICS. Minor amendments are made to the WIA to permit this. We are discussing with the Scottish Government whether it would be helpful for similar adjustments to be made to Scots law.
18. The Government proceeds in accordance with a convention that it will not normally ask Parliament to legislate in relation to matters within the legislative competence of the National Assembly for Wales or the Scottish Parliament without their respective consents.

COMMENTARY

PART 1

WATER INDUSTRY

Expansion of water supply licensing

Clause 1: Types of water supply licence and arrangements with water undertakers

19. This clause replaces the existing section 17A of the WIA with a new provision on the issue of water supply licences. New section 17A allows the Secretary of State and Ofwat to issue water supply licences which give the holder certain rights with respect to the water supply system and provision of water supply services to eligible premises in undertakers' areas in England and Wales in line with the current procedures for issuing licences. "Eligible premises" means premises that may be supplied under a retail or restricted retail authorisation as appropriate (see below).
20. Subsections (2) to (4) extend the concept of different authorisations for carrying out different activities under the water supply licence. The purposes of these authorisations are set out in paragraphs 1 to 10 of Schedule 1 – see below. The existing retail and supplementary authorisations are retained for licensees using the supply system of an undertaker wholly or mainly in Wales, under the names "a restricted retail authorisation" and "a supplementary authorisation" respectively.
21. This clause also introduces a new section 17AA in the WIA which outlines in subsections (1) to (3) the persons that the Secretary of State or, as the case may be, Ofwat, must consult before issuing licences with certain authorisations. The Government's intention is that these consultees can then make an assessment of whether the applicant is a suitable person for inputting water into the public supply system or for building infrastructure which may affect the quality of drinking water. This includes an obligation to consult the Welsh Ministers on the appointment of licensees using the supply systems of undertakers wholly or mainly in Wales.

22. Subsection (4) of new section 17AA excludes water undertakers from holding a water supply licence, which means they must set up a company or partnership, for example, to apply for a water supply licence if they want to enter the market.
23. The effect of subsections (5) and (6) of new section 17AA is to allow only limited companies to hold a water supply licence with a wholesale, supplementary, retail infrastructure or network infrastructure authorisation. This allows these licencees to be subject to the special administration regime under sections 23 to 25 of the WIA should they become insolvent or fail to meet their statutory obligations where they hold a retail infrastructure or network infrastructure authorisation or where their supplies are designated as strategic under sections 66G and 66H of the WIA. This would allow for the continuation of essential water services to customers if the limited company gets into difficulties (administration and by extension special administration is a mechanism for handling cases involving insolvent companies rather than bankrupt individuals, partnerships etc.).
24. This clause also gives effect to Schedules 1 and 2. Schedule 5 separately enables the Welsh Ministers to commence the reformed regime in Wales – see paragraph 26 on Clause 5 below.

Clause 2: The supply system of a water undertaker

25. This clause adds a new subsection (4A) to section 17B of WIA that extends the meaning of a water undertaker’s “supply system” for the purposes of activities under a water supply licence in the areas of water undertakers wholly or mainly in England. The current definition, which only covers the mains and pipes of a water undertaker downstream of a water treatment works (often called the “potable” supply system) and discrete non-potable supply systems, is extended to cover treatment works, reservoirs and other water storage facilities. This means that water supply licensees with wholesale and network infrastructure authorisations will have more options to introduce water for the purpose of supplying premises. The existing definition for the supply systems used by undertakers wholly or mainly in Wales is retained.

Clause 3: The threshold requirement

26. Currently under section 17A(3)(b) of the WIA, licensees may only supply to premises whose water consumption exceeds the threshold requirement set out in section 17D. In order to allow every non-household customer to switch to water supply by a licensee, the UK Government would expect to repeal this threshold for premises within the areas of water undertakers that are wholly or mainly in England at the same time as the introduction of the new water supply licensing arrangements. This would be done by commencing Clause 1 and Schedule 1 of the bill which would bring new Schedule 2A of the WIA into force. Clause 1 substitutes all of section 17A and, under paragraph (9)(b) of inserted Schedule 2A, only water supply licensees holding restricted retail authorisations (that is, those using the networks of water undertakers based wholly or mainly in Wales) would remain subject to the threshold requirement.
27. This would remain the case unless and until the new licensing arrangements were fully commenced in Wales, or paragraph 9(b) was otherwise repealed. This would be done by the Welsh Ministers for premises in Wales and by the Secretary of State for premises in England.

28. Under subsection (1)(a) of clause 3, the power to repeal the threshold could also be exercised before the introduction of the new licensing arrangements by repealing section 17A(3)(b) of the WIA. This power would lie with the Secretary of State for premises in undertaker areas wholly or mainly in England and for the English parts of areas served by undertakers mainly in Wales. The Welsh Ministers would have the power to remove the threshold requirement in the rest of Wales. If 17A(3)(b) was repealed in relation to undertakers wholly or mainly in Wales, paragraph 9(b) of Schedule 2A would also be repealed, thereby preventing it from ever coming into force. Again, the power would lie with the Secretary of State for premises in undertaker areas wholly or mainly in England and for the English parts of the areas served by undertakers mainly in Wales. The Welsh Ministers would retain the power to remove the threshold requirement in the rest of Wales.

Introduction of sewerage licences

Clause 4: Types of sewerage licence and arrangements with sewerage undertakers

29. This clause inserts a new section 17BA into the WIA introducing sewerage licences. Under this clause the Secretary of State and Ofwat can issue sewerage licences which give the holder certain rights with respect to the sewerage system and provision of sewerage services to eligible premises in the areas of sewerage undertakers wholly or mainly in England, in line with the current procedures for issuing water supply licences.
30. Subsection (2) lists the different authorisations for carrying out different activities under the sewerage licence. The purposes of these authorisations are set out in paragraphs 1 to 10 of Schedule 3 – see below.
31. Subsection (8) of new section 17BA defines the sewerage system of a sewerage undertaker as the system of public sewers, the facilities for emptying them and dealing with their contents, and the lateral drains they must maintain, under the duty of a sewerage undertaker to provide a sewerage system to ensure its area is effectually drained – that is set out in section 94 of the WIA.
32. This clause also inserts a new section 17BB into the WIA. Subsection (1) requires Ofwat to consult the Secretary of State and the Environment Agency before granting a sewerage licence with a wholesale authorisation, a retail infrastructure authorisation, a network infrastructure authorisation or a disposal authorisation. The Government’s intention is that the Environment Agency be able to assess the suitability of the applicant to use the public sewer system.
33. Subsection (2) of new section 17BB excludes water and sewerage undertakers from holding a sewerage licence, which means they must set up a company or partnership, for example, to apply for a sewerage licence if they want to enter the market.
34. The effect of subsections (3) and (4) of new section 17BB is to allow only limited companies to hold a sewerage licence with a wholesale, retail infrastructure, network infrastructure, or disposal authorisation. This allows these licencees to be subject to the special administration regime under sections 23 to 25 of the WIA should they become insolvent or fail to meet their statutory obligations where they hold a retail infrastructure or network infrastructure authorisation or where their services are designated as strategic under new sections 117M and 117N of the WIA (included within Schedule 4 to the

Bill). This would allow for the continuation of essential sewerage services to customers if the limited company gets into difficulties (administration and by extension special administration is a mechanism for handling cases involving insolvent companies rather than bankrupt individuals, partnerships etc.).

35. This clause also gives effect to Schedules 3 and 4.

Application as regards Wales

Clause 5: Water supply and sewerage licensing changes applied as regards Wales

36. This clause would apply the new water supply and sewerage licensing arrangements to the areas of undertakers wholly or mainly in Wales as they apply to undertaker areas wholly or mainly in England. The Secretary of State (in England) and the Welsh Ministers (in Wales) have the power to bring Schedule 5 into force. The Welsh Ministers can only do so through an order under the affirmative procedure before the National Assembly for Wales. The amendments in Schedule 5 amend or repeal words of the WIA, as amended by other provisions in this Bill, that prevent the new water supply authorisations and the new sewerage licences from applying to undertakers whose areas are wholly or mainly in Wales.

Water supply licences and sewerage licences: household premises

Clause 6: Household premises served by a licensee's retail infrastructure

37. This clause allows the Secretary of State and the Welsh Ministers to extend the type of premises that can be served by water supply and sewerage licensees under new Schedules 2A and 2B to include household premises served by retail infrastructure. The Secretary of State can do this for England and for those parts of Wales served by undertakers whose areas are mainly in England. The Welsh Ministers can do so for the rest of Wales through an order under the affirmative procedure before the National Assembly for Wales.
38. In conjunction with the powers in clause 10, this could expand the water supply and sewerage licensing regimes through the provision of services to new housing developments in order to replace the “inset” regime (which allows developers of greenfield sites to choose alternative suppliers to the local undertaker). The Government’s expectation is that through changes to licence and appointment conditions, whilst it would be possible for household customers receiving a supply for the first time to be supplied by a licensee, it would not be possible for an undertaker or licensee to subsequently compete for those customers.
39. This clause also enables the Secretary of State to make the necessary consequential amendments to primary and secondary legislation to ensure that household customers are properly protected. The order to do so must be laid before Parliament under the affirmative procedure.

Licensing arrangements between England and Wales and Scotland

Clause 7: Arrangements with the Water Industry Commission for Scotland

40. This clause allows for an application to the Water Industry Commission for Scotland (WICS) for a water services licence or sewerage services licence to be also treated as an application for a water supply licence or sewerage licence respectively in England and Wales. Such licences would only include retail or restricted retail authorisations.

41. The clause also inserts new section 17S into the WIA giving Ofwat a power to co-operate with WICS in relation to the licensing and regulation of retail licences granted by WICS. This will enable Ofwat to disclose information to WICS under section 206(3)(a) of the WIA.
42. The intention behind the clause is to assist in the development of a market across England and Scotland in relation to water supply and sewerage retail services for non-household customers and in Wales for eligible water supply customers.
43. Similar provisions will also be needed in Scots law to give effect to the policy.

Arrangements between relevant undertakers

Clause 8: Bulk supply of water

44. This clause replaces sections 40 and 40A of the WIA with provisions to regulate bulk water supply agreements between “the supplier” (a water undertaker) and a “qualifying person” (another water undertaker or a person who has made an application to become an undertaker). These provisions apply when one of the parties makes an application to Ofwat for a determination. Certain enforcement provisions of the Competition Act 1998 are disapplied for these agreements for some purposes.
45. New section 40 allows Ofwat, on the application of one of the parties to the ensuing agreement, to make an order for the supplier to make a bulk water supply to a qualifying person, and for that qualifying person to take it, under such terms and conditions as Ofwat specifies. As under current legislation, Ofwat can only make an order if it is satisfied that the bulk supply is necessary or expedient for securing the efficient use of water resources and where it is satisfied that the parties are unable to come to an agreement themselves. An agreement imposed by order takes effect as an agreement between the parties and would therefore be enforceable by private law.
46. New section 40A applies similar provisions as under new section 40 when any party to an existing bulk supply agreement wishes to vary or terminate a bulk water supply arrangement. A bulk supply agreement includes one which was made of the parties’ own volition and one made or varied by order under section 40A.
47. New section 40B gives Ofwat a power to produce one or more codes relating to bulk supply agreements in specific cases or more generally. These codes may set out standard or specific terms and conditions between the parties which may be mandatory or not; may include principles for determining what terms and conditions are suitable for particular bulk supply agreements, or more generally; and may also include the procedures for when a request to agree is received by an undertaker and steps to be taken to reach, amend or terminate an agreement. Ofwat has a power of direction where it believes an undertaker is not acting in accordance with the market codes. The direction is enforceable under section 18 of the WIA.
48. New sections 40C and 40D outline the procedures that Ofwat must follow when producing or revising a code, including the persons and 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 and the Welsh Ministers 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, or to so much of a code,

that relates to bulk supply agreements between water undertakers wholly or mainly in Wales. The Government's intention is that this will allow for ministers to ensure that their water quality and environmental responsibilities are accounted for in the code. Any revised code may include provisions relating to how the revisions may affect bulk supply agreements already in place before the revised code is in force.

49. New section 40E allows Ofwat to publish and revise rules about charges which may be levied by water undertakers on other qualifying persons under bulk water supply arrangements. It also allows the Secretary of State and the Welsh Ministers to issue joint guidance on the content of the rules. Ofwat has a power of direction, enforceable by section 18, if it believes an undertaker is not acting in accordance with the charging rules.
50. New section 40F provides for variations of Ofwat's rules on charging to allow those party to, or about to enter into, a bulk supply agreement to apply for a reduced charge when they or their customers take, or are prepared to take, steps to reduce pressure on water resources (for example by agreeing to take less water during high peak periods or during droughts, etc.). In accepting an application for a reduced charge, Ofwat may impose conditions on the parties to a bulk supply agreement, in particular to pass on the reduced charge to customers.

Clause 9: Main connections into sewerage systems

51. This clause replaces existing section 110A of the WIA with a provision to regulate main connection agreements between a sewerage undertaker and "a qualifying person" (another sewerage undertaker or a person who has made an application to become an undertaker). They apply when one of the parties makes an application to Ofwat for a determination. Certain enforcement provisions of the Competition Act 1998 are disapplied for these agreements for some purposes.
52. New section 110A allows Ofwat, on the application of one of the parties to the ensuing agreement, to make an order for a sewerage undertaker to permit a qualifying person to connect to its system under such terms and conditions as Ofwat specifies. As under current legislation, Ofwat can only make an order if it is satisfied that the main connection is necessary or expedient for the purpose of Part 4 of the WIA which refers to, and where it is satisfied that the parties are unable to come to an agreement themselves. An agreement imposed by order takes effect as an agreement between the parties and would therefore be enforceable by private law.
53. New section 110B applies similar provisions as under new section 110A when any party to a main connection agreement wishes to vary or terminate the main connection arrangement. A main connection agreement includes one which was made of the parties, own volition and one made or varied by order under section 110B.
54. New section 110C gives Ofwat a power to produce one or more codes relating to main connection agreements in specific cases or more generally. These codes may set out standard or specific terms and conditions between the parties which may be mandatory or not; may include principles for determining what terms and conditions are suitable for particular main connection agreements or more generally; and may also include the procedures for when a request to agree is received by an undertaker and steps to be taken to reach, amend or terminate an agreement. Ofwat has a power of direction where it believes a party to the agreement is not acting in accordance with the market codes. The direction is enforceable under section 18 of the WIA.

55. New sections 110D and 110E outline the procedures that Ofwat must follow when producing or revising 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 and the Welsh Ministers 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, or to so much of a code, that relates to a main connection causing matter to be discharged into the system of a sewerage undertaker wholly or mainly in Wales. Our intention is that this will allow for ministers to ensure that their environmental responsibilities are accounted for in the code. Any revised code may include provisions relating to how the revisions may affect main connection arrangements already in place before the revised code is in force.
56. New section 110F allows Ofwat to publish rules about charges which may be levied by sewerage undertakers on qualifying persons under main connection agreements. It also allows the Secretary of State and the Welsh Ministers to issue joint guidance on the content of the rules. Ofwat has a power of direction, enforceable by section 18, if it believes an undertaker is not acting in accordance with the charging rules.
57. New section 110G provides for variations of Ofwat's rules on charging, to allow those party to, or about to enter into, a main connection agreement to apply for a reduced charge when they or their customers take, or are prepared to take, steps to reduce pressure on the sewerage system (for example to store storm water during wet seasons rather than overload the sewerage system etc.) or it is otherwise reasonable to do so. In accepting an application for a reduced charge, Ofwat may impose conditions on the parties to a main connection agreement, in particular to apply the reduced charge to customers.

Inset appointments

Clause 10: Restriction on appointment in unserved area and large user cases

58. This clause amends section 7 of WIA to limit the issue of new inset appointments (under section 7(4) to existing (or applicant) undertakers or their associates (for example a subsidiary, parent or sister company). New entrants will only be able to enter the markets through the water supply and sewerage licensing regime. This will apply to the areas served by undertakers wholly or mainly in England when subsections 1 to 5 come into force. The Secretary of State may by order apply the restriction to the English parts of areas served by undertakers wholly or mainly in Wales. The Welsh Ministers may, through an order under the affirmative procedure before the National Assembly for Wales, apply the restriction to the Welsh parts of those areas.
59. However, once clause 6 is also commenced, new entrants holding appropriate water supply or sewerage licences that wish to serve household premises not already served (generally in new housing developments) will be able to do so if those households are supplied via any licensee's retail infrastructure.

Clause 11: Procedure with respect to inset appointments

60. This clause amends section 8 of the WIA by extending the list of persons that should receive notices as part of the application process to be an inset appointee. Currently the lists only consist of the local undertaker, the National Rivers Authority (NRA) and local authorities in the area of the proposed inset.

61. The clause removes the name of the NRA from the consultees and adds the Environment Agency (the NRA's successor body), and for changes to water supply appointees, either the Chief Inspector of Drinking Water or the Chief Inspector of Drinking Water for Wales as applicable.

Duty of OFT to refer mergers of relevant undertakers to Competition Commission

Clause 12: Exceptions to duty and undertakings in lieu of merger references

62. This clause inserts new provisions in the WIA to reform the special merger regime in sections 32 to 35 of the WIA. This regime currently requires the OFT to make a referral to the Competition Commission where there is a merger between undertakers where one or other of the parties to the merger has an annual turnover of £10 million or more. Under paragraph 3 of Schedule 4ZA to the WIA on a merger reference under section 32, the Competition Commission has to determine whether the loss of one or more undertakers (comparators) is going to impact Ofwat's ability to regulate using comparative regulation.
63. New section 33A of the WIA states that the OFT may decide not to make a merger reference if:
- in the case of an anticipated merger, the merger arrangements are not sufficiently advanced or are unlikely to proceed (for example if negotiations have stalled);
 - the merger (anticipated or otherwise) is not likely to prejudice Ofwat's ability to regulate (for example if one of the undertakers is not subject to comparative regulation or if it is not a suitable comparator); or
 - although the merger (anticipated or otherwise) is likely to prejudice that ability, the benefits to customers by allowing the merger outweigh the loss of a comparator (for example if the merger produces lower prices or higher quality services for the customer etc.).
64. The OFT must ask Ofwat for, and Ofwat must give, an opinion on the impact of the merger on Ofwat's ability to regulate and how that weighs up against potential customer benefits. In making this assessment, Ofwat must apply the methods set out in the statement of methods required under new section 33C. The Government's intention is that the statement should give acquiring undertakers and the OFT some certainty about whether a proposed merger (taking into account any undertakings proposed under new section 33D – see below) would prejudice Ofwat's ability to regulate and the likely impact of that prejudice. The OFT must consider Ofwat's opinion before coming to a decision.
65. New section 33D enables the OFT, having consulted Ofwat, to accept undertakings from parties to the merger for the purposes of remedying or mitigating the prejudicial impact of losing a comparator instead of making a merger reference. In carrying out these functions, the OFT must have regard to the need to achieve a comprehensive solution as possible to compensate for the prejudice resulting from the potential loss of a comparator. Undertakings may for example include continuing with separate price limits, divestment of some or part of the business of the undertaker etc. The OFT may subsequently allow an undertaking to be varied, replaced or released if necessary at a later date should circumstances change etc, and must consider any representations made in relation to a change to an undertaking as soon as reasonably practicable. The OFT must not make a merger reference if it is considering whether to accept undertakings from the acquiring undertaker.

Clause 13: Exclusion of small mergers: advice of OFT on threshold

66. This clause introduces a new duty on the OFT to keep under review, and advise the Secretary of State on, the turnover threshold at which, and conditions on which, it must refer any anticipated or actual mergers between undertakers to the Competition Commission.
67. The current threshold is set at £10 million and this is applied where the turnover of one or both undertakers is £10 million or more. Our intention is that the advice of the OFT will assist the Secretary of State in deciding whether to change the threshold and conditions for making a reference using existing powers under section 33(7) of the WIA.

Relevant undertakers' charges

Clause 14: Charges schemes

68. The clause substitutes subsections (6) and (6A) for subsections (6) to (9) of section 143 of the WIA. This removes the requirement that water companies' charges schemes do not take effect until approved by Ofwat. However, companies will be required to make their charges schemes in accordance with rules which Ofwat must produce.
69. Subsection (2) inserts new section 143B into the WIA which describes the rules and sets out the process by which the rules are to be produced. There are several requirements that charges schemes must comply with in legislation, in principles produced by Ofwat, and in appointment conditions. The new inserted section gives Ofwat a power to issue (and subsequently revise) charging rules that undertakers' charges schemes must also comply with. It also gives Ofwat a power of direction, enforceable under section 18 for when Ofwat thinks a company is not acting in accordance with the rules. The direction might, for example, direct that schemes be replaced the following charging year or, if absolutely necessary, in year, or to take such other action as is appropriate – for example for the undertaker to conduct better research into its customer base.
70. In producing any rules under new section 143B Ofwat must have regard to any guidance issued jointly by the Secretary of State or the Welsh Ministers. New section 143B reproduces in the rules the effect of the provision in section 143 that Ofwat cannot exercise this power for the purpose of limiting the total revenues of relevant undertakers from charges fixed by, or in accordance, with charges schemes.

Clause 15: Charging rules

71. This clause inserts new section 144ZA into the WIA placing a duty on Ofwat to publish rules about charges which may be levied by water undertakers and sewerage undertakers for connections to, and the provision of, water mains, public sewers and some associated infrastructure, as well as any amounts payable in the form of an asset payment by an undertaker on the adoption of water supply or sewerage infrastructure laid other than by the undertaker (self lay). These rules replace certain existing provisions in the WIA relating to various financial requirements that may be imposed by a water undertaker in return for that undertaker carrying out its duties or obligations under the sections amended by clauses 16 and 17 of the bill. The amended provisions include charges that may be imposed, and methods for their calculation, as well as provision as to security that may be required. The clause gives Ofwat a power of direction, enforceable under section 18 if Ofwat thinks a company is not acting in accordance with the rules. A similar procedure applies to making the rules (under new section 144ZB) as for the new charges schemes rules under new section 143B described above.

Clause 16: Charges for providing a water main etc

72. This clause makes several amendments to the WIA to allow for charging rules under clause 15 to be the basis on which charges for new connections to an undertaker's water supply system are made. The clause repeals provisions as to security for payments to be made, so that these too can be set in accordance with charging rules. The clause also makes consequential amendments to Ofwat's powers to make determinations under section 30A in respect of charges and security.
73. Subsections (2) to (7) make changes to various provisions that allow a water undertaker to impose charges and require security in respect of section 41 (duty to provide a water main), section 45 (duty to make domestic connections to a water main), section 46 (duties to carry out ancillary works), 51A (agreements to adopt a self laid water main or service pipe). Schedule 7 paragraph 51 of the Bill repeals sections 43 and 43A which contain methods for calculating aspects of the charges.

Clause 17: Charges for providing a public sewer etc

74. This clause makes several amendments to the WIA to allow for the charging rules under clause 15 to be the basis on which charges for new connections to an undertaker's sewerage system are made. The clause repeals provisions as to security for payments to be made, so that these too can be set in accordance with charging rules. The clause also makes consequential amendments to Ofwat's powers to make determinations under section 30A in respect of charges and security.
75. Subsection (2) makes changes to section 99 in respect of provisions that allow a sewerage undertaker to impose charges and require security in respect of section 98 (duty to provide a sewer or lateral drain) and makes similar provision in section 101B (power to construct lateral drains). Schedule 7 paragraph 49 of the Bill repeals sections 100 and 100A which contain methods for calculating aspects of the charges.
76. Subsection (4) inserts into section 104 of the WIA, provision for a further term to be included in section 104 agreements that a person constructing, or proposing to construct, a new "self-lay" sewer will pay the undertaker for any additional infrastructure the undertaker provides which between them they agree is necessary as a result of the new sewer becoming part of the undertaker's system. The payment shall be set in accordance with the charging rules.
77. Subsection (5) inserts a new section 105ZA, modelled on section 51C, setting out the financial conditions of compliance with section 104 agreements to adopt self laid sewers. The payments and security required must be in accordance with charging rules. The clause introduces provision for asset payments to be made by undertakers for self laid sewers. Such payments (if required) must be in accordance with charging rules.
78. Subsection (6) amends section 107 of the WIA. Under existing section 107(3)(b) an undertaker need not make the connection until the person requesting that connection has paid or given security for a reasonable estimate of costs. The amendments require that this cost is calculated in accordance with the charging rules. Any difference between this initial payment and the final charge allowable under the charging rules must be paid or repaid as appropriate.

Clause 18: Extension of time limit for imposing financial penalties

79. This clause amends section 22C of the WIA by increasing the limitation from twelve months to five years for the Secretary of State, the Welsh Ministers or Ofwat to impose a civil financial penalty on an undertaker or licensee for an historic breach of an appointment or licence condition or a relevant statutory obligation. It remains the case that the time limit for imposing a penalty does not apply if a formal notice has been served on the person on whom the penalty is to be imposed, before the end of the limitation period. The provision ensures that the extended time limit does not apply to a contravention prior to the clause coming into force.

Clause 19: Conduct of marketing activities

80. This clause inserts a new section 30B into the WIA. New section 30B enables the Secretary of State, upon a reasoned application by Ofwat (which has been sufficiently consulted on with the Welsh Ministers, the Consumer Council for Water, relevant undertakers and licensees, and others with an interest), to prescribe in a negative resolution order, provisions on the conduct of marketing activities of undertakers, licensees and their respective agents (for example operators of comparison websites).

81. Such provisions might be designed to address issues around mis-selling of new water supply contracts (for instance if a new arrangement makes a customer worse-off than if he had remained with the undertaker). The provisions in the order may also prescribe such matters as the minimum information that must be provided to enable the customer to make an informed decision about whether the customer wants to enter into a new water supply or sewerage arrangement.

Clause 20: Standards of performance: water supply licensees

82. This clause inserts new sections 38ZA and 39ZA into the WIA giving the Secretary of State powers to set standards of performance relating to water supply services provided by water supply licensees (currently the powers in section 38 of the WIA only apply to services provided by water undertakers). Standards of performance, which are prescribed in secondary legislation, are the minimum levels of service in terms of quality and timeliness that water suppliers must provide to their customers in the normal course of business or when things go wrong. The secondary legislation may also include provision as to the level of payment that customers must receive if the prescribed standards of performance are not met. The clause also amends section 38A of the WIA (information as to levels of performance which must be supplied to Ofwat) to extend that section to water supply licensees.

Clause 21: Standards of performance: sewerage licensees

83. This clause makes the same provision in relation to sewerage services provided by sewerage licensees as is made by clause 20 in relation to water supply services provided by water supply licensees by inserting new sections 95ZA and 96ZA and amending section 95A.

Clause 22: Obtaining information for enforcement purposes

84. This clause amends section 203 of the WIA to extend current powers to demand information. Under the current section 203 the appropriate Minister and Ofwat can demand information from any person about potential contraventions by water and sewerage undertakers of their or others' appointment and licence conditions or other statutory requirements enforceable under section 18 of WIA.
85. This clause extends the subjects on which information can be demanded by Ofwat and the Minister, to situations where an undertaker is causing or contributing to a contravention by another undertaker, or where a licensee is causing or contributing to a contravention by another licensee of appointment or licence conditions or other statutory requirements enforceable under section 18 of WIA. Information can also be demanded about both undertakers' and licensees' compliance in individual cases with the prescribed standards of performance relating to water supply and sewerage services.

Clause 23: Modification of appointment and licence conditions

86. This clause provides Ofwat with a time limited power to make changes to undertakers' conditions of appointment and licensed water suppliers' licence conditions in order to implement changes made in this Bill to the water supply licensing regime. Before making changes Ofwat must consult the holder of the appointment or licence.

PART 2

WATER RESOURCES

Clause 24: Frequency of water resources management and drought plans

87. This clause amends sections 39B of the WIA to change the frequency of drought plans to a maximum five yearly cycle in keeping with water resources management plans. Where there is a duty to prepare a revised plan within the five year time limit, this means the revised plan must be prepared and published within the five years (in accordance with the procedure in section 37B of the WIA).
88. Subsections (4) to (9) of new section 37D empower the Secretary of State in respect of undertakers wholly or mainly in England, or the Welsh Ministers in respect of undertakers wholly or mainly in Wales, to amend the planning timeframes for water resources management plans. This can only be done by order using the negative resolution procedure. The Secretary of State's and the Welsh Ministers' powers here can be exercised in the same statutory instrument. New section 39D makes the same arrangements for drought plans.

Clause 25: Maps of waterworks

89. This clause repeals section 195 of the Water Resources Act 1991, removing the duty on the Environment Agency to keep and maintain a record of the resource mains, discharge pipes and other underground works that it owns. Subsection (2) makes a consequential amendment to schedule 23 of the Water Resources Act 1991 to allow for the facts that the records of aspects of the Environment Agency's "undertaking" will no longer be recorded in maps kept by the Environment Agency.

PART 3

ENVIRONMENTAL REGULATION

Clause 26: Regulation of the water environment

90. This clause enables the Secretary of State (in relation to England) and the Welsh Ministers (in relation to Wales) to make regulations about water abstraction and impounding licences, flood defence consents and requirements for fish passes and screens. The regulation-making power is modelled upon the power in the single environmental permitting regime created under the Pollution Prevention and Control Act 1999 (the PPC Act). Regulations under this clause may be combined with regulations made under that regime to create a common system of environmental regulation.
91. Under the PPC Act, Ministers have powers to regulate polluting activities under a single regime. However, they do not have a power to place abstraction and impoundment licensing, flood defence consents or fish passage within that regime, as these do not relate to pollution as defined.
92. Integrating the permitting and regulatory regimes for abstraction, impounding, flood defence and fish passage will allow regulators to use one common process and compliance framework. The framework allows different levels of control to be applied to a particular activity, according to risk: bespoke permits; standard permits; exemptions from the requirement to hold a permit if specified conditions are satisfied.
93. Subsection (1) empowers the Secretary of State and the Welsh Ministers to make regulations for the purposes set out in Part 1 of Schedule 6. Under subsection (2), any provision made by such regulations must be made for or in connection with regulating: the use of water resources; securing the drainage of land or the management of flood risk; or safeguarding the movement of freshwater and migratory fish through regulated waters. Under subsection (3), Ministers must have regard to reducing burdens combining regulations made under this clause with systems for regulating activities causing pollution. Subsection (4) is a power to make consequential amendments to legislation, including primary legislation. Subsection (5) requires consultation before any regulations are made. Under subsection (10), regulations in relation to the passage of fish will not apply in the lower reaches of the River Tweed in England on the assumption that they will be regulated under law made by the Scottish Ministers.

Clause 27: Environmental regulation: procedure

94. This clause sets out the process to be employed by the Secretary of State and the Welsh Ministers to make regulations under clause 26. The first sets of regulations made by the Secretary of State and by the Welsh Ministers will be subject to the affirmative resolution procedure. Any subsequent regulations which create an offence or increase a penalty for an existing offence or which amend or repeal any provision of primary legislation, will also be subject to the affirmative procedure. Otherwise regulations will be subject to the negative procedure unless the following provisions of the clause (about combining regulations) require the regulations to be subject to the affirmative procedure.

95. Subsections (5) and (6) make provision about the procedure that will apply if regulations made under clause 26 are combined with regulations under section 2 of the PPC Act. A inserted into section 2 of is inserted into section 2 of the PPC Act by subsection (13) of the clause.
96. Subsections (9) to (12) make procedural provision for statutory instruments which combine regulations made by the Secretary of State under clause 26 with regulations made by the Welsh Ministers under that clause.

Clause 28: Repeal of certain provisions about culverts

97. This clause repeals sections 262, 263 and 264 of the Public Health Act 1936.
98. Section 262 of the Public Health Act 1936 gives local authorities power to require the culverting of watercourses and ditches where building operations are proposed.
99. Section 262 was introduced to allow watercourses to be covered so that they did not cause health problems. The approach now is to address the pollution and not cover up the watercourse. The Environment Agency's policy is to discourage culverting as it is not consistent with good surface run-off.
100. Under section 263 watercourses in urban districts may not be culverted except in accordance with plans approved by the local authority.
101. Section 23 of the Land Drainage Act 1991 and section 109 of the Water Resources Act 1991 require that owners/occupiers who wish to erect or alter any mill dam, weir or other like obstruction to a watercourse, or erect or alter any culvert must seek the prior consent from either the Lead Local Flood Authority, the relevant Internal Drainage Board or the Environment Agency depending on the location of the proposed works. In combination with section 263 of the Public Health Act these provisions requires that owner/occupiers apply for parallel consents from a number of bodies.
102. Section 264 requires the land owner or occupier to repair and cleanse any culvert on their land. Local authorities are empowered to require the repair or cleansing of a culvert if they consider that the owner/occupier has not complied with this duty.
103. Under section 25 of the Land Drainage Act 1991, Internal Drainage Boards, and Lead Local Flood Authorities can require the responsible person to undertake works to maintain the flow of an ordinary watercourse. The Government therefore considers that these provisions are sufficient and section 264 of the Public Health Act is no longer required.

PART 4

GENERAL AND FINAL

Clause 30: Power to provide for consequential amendments etc

104. This clause gives the Secretary of State a power to make amendments consequential on the Bill. This includes a power to make transitional, transitory or saving provision and a power to repeal and amend legislation, including primary legislation. Where primary legislation is repealed or amended, the affirmative resolution procedure must be followed.

SCHEDULES

Schedule 1: Water supply licences: authorisations

105. This Schedule inserts a new Schedule 2A into the WIA which outlines the new authorisations under the water supply licence.
106. Paragraphs 4 and 9 effectively stipulate that water supply licensees cannot supply household premises. Households are defined for this purpose in section 17C of the WIA as premises in which, or in any part of which, a person has his home and where the main use of the premises is as a home. Paragraph 9 also requires that non-household premises must meet or exceed a water usage threshold test to be eligible to change water supplier from the local undertaker to the holder of a restricted retail authorisation. The current water usage threshold is 50 million litres of water a year.
107. Paragraph 6 defines a retail infrastructure authorisation in a water supply licence as allowing the licensee to take water from the supply system of a water undertaker whose area is wholly or mainly in England and use its own supply system to transport that water to premises supplied under its own or another licensee's retail authorisation. In other words the licensee can use its own mains and pipes to supply eligible premises with water from a water undertaker's supply system similar to the service provided under the inset regime (for example the provision of the so called "last mile" infrastructure to industrial or commercial premises etc.).
108. Paragraph 7 defines a network infrastructure authorisation in a water supply licence as allowing the licensee to take and re-introduce water (the same or different water) from the supply system of a water undertaker wholly or mainly in England. This may, for example, involve the company taking untreated water from one part of the supply system and re-introducing treated water into another part.
109. Paragraphs 13 and 14 define a person that is associated with the licensee. A person would be associated if it is: a subsidiary, parent or sister company of the licensee; an individual or unincorporated association linked to the licensee; or within a partnership of which the licensee is a member.

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

110. This Schedule introduces amendments to the WIA to widen the duties of water undertakers to take into account new authorisations permitted under the water supply licence.
111. Paragraph 1 substitutes new sections 66A, 66AA, 66B, 66C, 66CA and 66CB for existing sections 66A, 66B, and 66C of the WIA. New sections 66A to 66CB 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.
112. New section 66A of the WIA allows a water supply licensee with a retail authorisation or restricted retail authorisation 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. The

water undertaker does not have to make a connection if the premises in question are served under a retail infrastructure authorisation. This is because the holder of the retail infrastructure authorisation will make such a connection.

113. The water undertaker can also 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; the water fittings in question are not compliant with any regulations produced under section 74 of the WIA; or, if the premises are served by a licensee holding a retail infrastructure authorisation, the holder of the retail authorisation has not made the necessary arrangements with that licensee.
114. New section 66AA also 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).
115. New section 66B allows a water supply licensee with a wholesale authorisation or supplementary authorisation to introduce water into a water undertaker's supply system (including into a treatment works for the holder of a supplementary authorisation) for the purpose of supplying premises in the undertaker's area under an appropriate retail or restricted retail authorisation. 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, which are to be regarded as water mains) to connect the undertaker's supply system or treatment works. 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.
116. New section 66C allows a water supply licensee to request a supply from a neighbouring water undertaker to serve eligible premises under a retail authorisation or restricted retail authorisation. The neighbouring undertaker (the secondary undertaker) is subject to a duty to enable that supply to be made unless it would incur unreasonable costs or if it impacts on its own supply obligations. The eligible premises which may be supplied under a retail authorisation is limited where the water comes from an secondary undertaker wholly or mainly in Wales. The water undertaker which is appointed to the area where the premises are located (the primary undertaker) is also able to refuse to enable that supply on the same grounds as the secondary undertaker. The duties must be performed in accordance with a section 66D agreement (see below).
117. New section 66CA allows a water supply licensee with a retail infrastructure authorisation to request a connection between its retail infrastructure (for example the mains, pipes etc. connected to eligible premises and supplied under a retail authorisation) and the supply system of a water undertaker in that area. The connection must be in accordance

with a section 66D agreement (see below). The water undertaker must take such steps as necessary to make that connection unless it incurs unreasonable costs or if it impacts on its current or future supply obligations. The water undertaker can also refuse to make a supply if there is a contravention of any relevant water fitting regulations made under section 74 of the WIA in relation to the retail infrastructure to be connected.

118. New section 66CB allows a water supply licensee with a network infrastructure authorisation to request a water undertaker to make a connection and provide a water supply to its network infrastructure. The connection must be in accordance with a section 66D agreement (see below). The water undertaker must take necessary steps to enable the licensee to remove and re-introduce water into the supply system unless the undertaker incurs unreasonable costs or if compliance impacts on its current or future supply obligations.
119. Paragraph 2 inserts a new section 66CC in the WIA. Water supply licensees are able to refer for determination cases where water undertakers are not meeting any specified conditions relating to their connection or supply duties. Before making a determination relating to certain provisions Ofwat must first consult the Secretary of State, the Welsh Ministers and/or the Environment Agency.
120. Paragraph 3 substitutes a new section 66D in the WIA. If undertakers and licensees cannot agree arrangements between them under sections 66A to 66CB any of the parties may apply to Ofwat for the regulator to determine the terms of an agreement by order, vary the terms of an existing agreement, or terminate an agreement. The order has effect as an agreement between the parties, or varies or terminates such agreement as the case may be. Agreements and orders deemed to be agreements under this section, as well as agreements under the duties at new sections 66A to 66CB, are referred to as “section 66D agreements”. Certain enforcement provisions of the Competition Act 1998 are disapplied for these agreements for some purposes.
121. Paragraph 4 inserts new sections 66DA to 66DC on market codes into the WIA.
122. New section 66DA gives Ofwat a power to issue one or more market 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, terms as to access to a licensee’s infrastructure by other licensees or an undertaker, 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 market code. The direction is enforceable under section 18 of the WIA (orders for securing compliance with certain provisions).
123. New sections 66DB and 66DC outline the procedures that Ofwat must follow when producing or revising 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 and the Welsh Ministers 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 with undertakers wholly or mainly in Wales. The Government’s intention is that this will allow for ministers to ensure that their water quality and environmental responsibilities are accounted for in the code.

124. Paragraph 5 substitutes a new section 66E in the WIA. New section 66E allows Ofwat to publish and revise rules about charges which may be levied by water undertakers under section 66D agreements and allows the Secretary of State and the Welsh Ministers to issue joint guidance about the content of the rules. These rules replace the existing “costs principle”. 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 with the rules. The direction is enforceable under section 18 of the WIA.
125. New section 66EA provides for variations of Ofwat’s rules on charges levied under 66D agreements to allow a licensee with a retail (or restricted retail) authorisation party to, or about to enter into, a section 66D agreement to apply for a reduced charge when the licensee or the licensee’s customers take, or are prepared to 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.). In accepting an application for a reduced charge, Ofwat may impose conditions on the parties to a section 66D agreement, in particular to pass on the reduced charge to customers. The Secretary of State can issue guidance to Ofwat on varying the rules to which it must have regard.
126. Paragraphs 6 to 10 make consequential 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.

Schedule 3: Sewerage licences: authorisations

127. This Schedule inserts a new Schedule 2B into the WIA which outlines the authorisations under the sewerage licence.
128. Paragraph 2 effectively stipulates that a sewerage licensee cannot serve household premises. The same meaning of household premises applies for sewerage as for water supply (see paragraph 106 above).
129. Paragraph 6 defines a retail infrastructure authorisation in a sewerage licence as allowing the licensee to remove matter from eligible premises under its own or another licensee’s retail authorisation via its own drains and pipes and discharge it into the sewerage system of a sewerage undertaker. This would enable a licensee to construct the so called “last mile” infrastructure to industrial or commercial premises, etc.
130. Paragraphs 7 and 8 define a network infrastructure authorisation in a sewerage licence as allowing a licensee to take matter from, and discharge matter into, the sewerage system of a sewerage undertaker for the purposes of providing services to eligible premises. This may, for example, involve the company taking untreated sewage from one part of the sewerage system and re-introducing treated sewage into another part. The Government’s intention is to help create a market for alternative sewers and treatment.
131. Paragraphs 9 and 10 define a disposal authorisation in a sewerage licence as allowing a licensee to remove matter from the sewerage system of a sewerage undertaker to treat, dispose of, or otherwise use it. The Government’s intention is to create a market for alternative sources of water (for example the supply of recycled water for industrial or commercial use) and sewage sludge (for example for energy production, fertiliser

manufacturing etc.). If the holder of a disposal authorisation also holds a retail authorisation it must also hold a wholesale authorisation. This is so that the holder does not serve eligible premises using the disposal authorisation.

132. Paragraphs 11 and 12 define a person that is associated with the licensee. A person would be associated if it is: a subsidiary, parent or sister company of the licensee; an individual or unincorporated association linked to the licensee; or within a partnership of which the licensee is a member.

Schedule 4: Sewerage undertakers' duties as regards sewerage licensees

133. This Schedule inserts a new Chapter 2A of Part 4 to the WIA to introduce a new licensing regime for the provision of services using a sewerage undertaker's sewerage system that is wholly or mainly in England.
134. New section 117A allows a sewerage licensee with a retail authorisation to provide retail services to eligible premises in a sewerage undertaker's area (including billing, reading meters, customer services etc.) using the undertaker's sewerage system. The sewerage undertaker is under a duty in accordance with a section 117G agreement (see below) to take such steps as necessary to connect premises when asked to do so by the licensee. The sewerage undertaker does not have to make a connection if the premises in question are served under a retail infrastructure authorisation. This is because the holder of the retail infrastructure authorisation will make such a connection. The sewerage undertaker can refuse to allow use of its system by the holder of a retail authorisation where there is no agreement in place for the removal of a corresponding amount of matter from the undertaker's sewerage system as that entering the system from the premises served.
135. 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 117G agreement (see below).
136. New section 117C allows a sewerage licensee with a wholesale authorisation to request a connection to the sewerage undertaker's system in order to remove a corresponding amount of matter as that entering the system from premises served under its 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 117G agreement (see below). Subsection (4) of new section 117C states that a pipe laid for the purposes of the undertaker's duty under this section is to be regarded as a disposal main. A "disposal main" is defined in section 219 of the WIA.
137. New section 117D allows a sewerage licensee with a retail infrastructure authorisation to request a connection between its retail infrastructure (for example the mains, pipes, etc. connected to eligible premises) and the sewerage system of a sewerage undertaker in that area, in order to discharge a corresponding amount of matter as that entering the licensee's infrastructure from premises served under its own or another licensee's retail authorisation. The sewerage undertaker must take such steps as necessary to make that connection and to permit the discharge. This duty must be performed in accordance with a section 117G agreement (see below). Subsection (4) of new section 117D states

that a pipe laid for the purposes of connecting the undertaker's sewerage system to the licensee's retail infrastructure is to be regarded as a public sewer. A "public sewer" is defined in section 219 of the WIA.

138. New section 117E allows a sewerage licensee with a network infrastructure authorisation to request a connection from a sewage undertaker's system to its network infrastructure. This will enable the licensee to remove from the undertaker's system a corresponding amount of matter as that entering the system from premises served under its own or another licensee's retail authorisation and then reintroduce up to an equivalent amount elsewhere into the system. The sewerage undertaker must take the necessary steps to enable the sewerage licensee to extract and re-introduce matter into the sewerage system in accordance with a section 117G agreement (see below). Subsection (4) of new section 117E states that a pipe laid for the purposes of the undertaker's duty under this section is to be regarded as a public sewer or a disposal main. Both terms are defined in section 219 of the WIA.
139. New section 117F allows a sewerage licensee with a disposal authorisation to request a connection to the sewerage undertaker's system in order 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 117G agreement (see below). Subsection (4) of new section 117F states that a pipe laid for the purposes of connecting the undertaker's sewerage system to the network infrastructure is to be regarded as a "disposal main" as defined in section 219 of the WIA.
140. Under new section 117G, if undertakers and licensees cannot agree arrangements between them under sections 117A to 117F any of the parties may apply to Ofwat for the regulator to determine the terms of the agreement by order, vary those terms or terminate the agreement. The order has effect as an agreement between the parties, or terminates such agreement as the case may be. Agreements and orders deemed to be agreements under this section, as well as agreements under the duties at new sections 117A to 117F, are referred as "section 117G agreements". Certain enforcement provisions of the Competition Act 1998 are disapplied for these agreements for some purposes.
141. New section 117H gives Ofwat a power to issue one or more market codes relating to section 117G agreements in specific cases or more generally. These codes may set out standard or particular terms and conditions between sewerage undertakers and sewerage licensees, terms as to access to a licensee's infrastructure by other licensees or an undertaker, and the procedures and steps to be taken to reach, amend or terminate an agreement. Ofwat may direct parties to section 117G agreements to comply with the market code. The direction is enforceable under section 18 of the WIA (orders for securing compliance with certain provisions).
142. New sections 117I and 117J outline the procedures that Ofwat must follow when producing or revising 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. This will enable the Secretary of State to ensure that her environmental responsibilities in relation to the sewerage industry are accounted for in the code.

143. New section 117K requires Ofwat to publish rules about charges which may be levied by sewerage undertakers under section 117G agreements and allows the Secretary of State to issue guidance about the content of the rules. 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 117G agreement to conform with the rules. The direction is enforceable under section 18 of the WIA.
144. New section 117L provides for variations of Ofwat's rules on charges levied under section 117G agreements to allow licensees holding retail authorisations party to, or about to enter into, a section 117G agreement, 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). In accepting an application for a reduced charge, Ofwat may impose conditions on the sewerage undertaker and the sewerage licensee, in particular to apply the reduced charge to customers. The Secretary of State can issue guidance to Ofwat on varying the rules to which it must have regard.
145. New section 117M and 117N provide for the designation of certain sewerage services provided by sewerage licencees 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 or meets its obligations to sewerage licensees under section 117B (for example if the sewerage undertaker was unable to treat or dispose of a source matter that had previously been dealt with by a now insolvent sewerage licensee with a wholesale authorisation). 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.
146. New sections 117O to 117R 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 117O 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.
147. Unauthorised extraction of matter from a sewerage undertaker's system, or other operations reflecting the retail infrastructure or network infrastructure authorisation, without such authorisation, under section 117P are punishable by a fine of up to £20,000 on summary conviction; and by an unlimited fine and/or imprisonment up to 2 years on indictment. Only the Secretary of State or Ofwat may instigate proceedings under this new section.
148. New section 117Q creates exemptions to the offences which may be provided for by order of the Secretary of State. This may be given generally or to specific groups or persons. The section sets out the procedure for making such an exemption including the giving of reasons and time (28 days) for representations to be made. Any notice of an exemption must be served on Ofwat and other persons likely to be affected. Notice of an exemption to a particular person is to be served on that person and other appropriate persons.

149. New section 117R provides for the revocation of an exemption by order subject to the negative procedure, 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. The Secretary of State must consult Ofwat before making the revocation and give notice to the people set out in subsection (5).

Schedule 5: Extension of licensing provisions in relation to Wales

150. This Schedule makes express provision to extend the new water and sewerage licensing provisions in the areas of water and sewerage undertakers wholly or mainly in Wales. The Schedule repeals references to "restricted retail authorisations" and "supplementary authorisations" and other provisions which restrict the application of the new licensing provisions to undertakers wholly or mainly in Wales (or England). They make consequential provisions in relation to consultation with the Welsh Ministers and the Chief Inspector of Drinking Water for Wales. The Schedule makes provision for the Secretary of State and the Welsh Ministers to do certain things jointly and makes consequential procedural amendments, including providing for a role for the National Assembly for Wales alongside Parliament.

Schedule 6: Regulation of the water environment

151. In Schedule 6, Part 1 lists the specific purposes for which the power in clause 26 may be used. Part 2 makes supplementary provision.
152. The purposes for which regulations under clause 26 may be made closely follow the purposes for which environmental permitting regulations under the Pollution Prevention and Control (PPC) Act may be made. This will enable a single system of environmental regulation to be created, combining regulations under clause 26 with regulations under the PPC Act, with common procedural requirements. Schedule 6 provides, for example, that the regulation making power in clause 26 may be used to make regulations requiring those carrying out specified activities to hold permits (paragraph 6); for those permits to contain conditions (paragraphs 8 and 37) which are to be reviewed by the regulator (paragraph 9); for regulators to take enforcement action in relation to permit holders and otherwise (principally paragraphs 13 to 16 and 20 to 25); for the creation of offences (such as failure to comply with permit conditions) (paragraphs 26 and 39); and for rights of appeal (paragraph 29).
153. As under the present regimes, fees will be payable to regulators in relation to the exercise of some of their functions (for example, in relation to the determining of applications for the grant of a permit and for the variation of the conditions of a permit) (paragraphs 11, 12 and 38).
154. Paragraphs 30 to 32 enable regulations under clause 26 to make provision similar to specified existing legislation. Thus, for example, paragraph 30 will allow provision to be made that corresponds, or is similar to, provision made by or under, or capable of being made under, section 71 of the WIA (water from water sources), Chapter 2 of Part 2 of the Water Resources Act 1991 (abstraction and impounding) and Part 1 of the Water Act 2003 (abstraction and impounding). Any existing legislation that is replicated in the regulations in this way may be repealed under clause 26.

155. Paragraph 39 provides for offences committed under the regulations to be triable in the Magistrates' or Crown Courts. The maximum punishment that may be imposed by Magistrates under the regulations is a fine of £20,000. Currently, this is the maximum punishment that may be imposed by Magistrates in the regimes in question (see sections 24 and 25 of the Water Resources Act 1991). However, when section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 is brought into force, the £20,000 limit will be replaced with a power to impose a fine of any amount. If section 85 is brought into force before the powers in this Bill are enacted, an appropriate amendment will be made to the Bill. The maximum punishment that may be imposed by a Crown Court is a fine of any amount, or a two year prison sentence, or both This reflects the existing maximum punishments in section 174 of the Water Resources Act 1991.
156. Transitional provision may be made in the regulations to ensure a smooth transition from the existing regime to the new. New activities and those undergoing substantial change probably will be regulated under the new regime set up under the regulations from the date on which the new regime comes into force. Existing licences, consents and permissions will remain extant and/or transition into the new regime.

Schedule 7: Minor and consequential amendments

157. This Schedule makes minor consequential changes to the WIA mainly to give effect to the new provisions in relation to water supply licensees and sewerage licensees. It also makes minor consequential amendments to the Flood and Water Management Act 2010 to give effect to clause 14 on charges schemes. Schedule 7 does not include the consequential amendments for Parts 4 to 8 of the WIA which need to be made for the new licensing regime in clauses 1 to 4. These will be included in the Bill introduced into Parliament.
158. Many of the provisions in this schedule substitute references to "licensed water suppliers" with references to "water supply licensees" or "sewerage licensees" (or certain authorisations given to such licensees) as appropriate. Other provisions in this schedule substitute references to "companies" with references to "persons" to give effect to the policy that the holders of retail authorisations can be unincorporated.
159. Paragraph 2, amongst other things, extends the duty on Ofwat, the Secretary of State and the Welsh Ministers in section 2 of the WIA to the exercise of their respective functions under relevant new sections inserted by the Bill.
160. Paragraphs 5 and 85 make correct cross referencing errors in the WIA concerning enforcement powers in relation to references to the Competition Commission and the abolition of the National Rivers Authority.
161. Paragraphs 6 to 22 extend the application of the sections in Chapter 1A of Part 2 to the WIA. They make provision in relation to the new types of authorisations available to water supply licensees and in relation to sewerage licensees. This includes extending the power to make regulations in relation to applications for water supply and sewerage licences under section 17F of the WIA to give effect to the joint retail market with Scotland. New regulations will allow an application made for a water services or sewerage services licence to the Water Industry Commission for Scotland (WICS) under section 6 of the

Water Services etc. (Scotland) Act 2005 to be regarded as an application for a retail or a restricted retail authorisation to Ofwat under the WIA as soon as the application is forwarded by WICS to Ofwat. This would allow WICS or Ofwat to operate as the single point of contact for licence applications received by each of them.

162. Paragraphs 23 to 34 amend the enforcement provisions in the WIA including extending the special administration regime to any removal of matter by a qualifying sewerage licensee which is designated as strategic sewerage provision (as provided for under new sections 117M and 117N) and to water supply and sewerage licensees that own retail infrastructure and network infrastructure. This ensures that essential water and sewerage services provided to premises can continue if the holders of the relevant authorisations become insolvent or otherwise fail to meet their statutory obligations.
163. Paragraphs 51 to 53 and 81 to 83 make repeals and amendments consequential on the new charging rules introduced by clauses 15, 16 and 17.

FINANCIAL EFFECTS

164. The total monetary benefits for the draft Water Bill (where monetary benefits and costs have been provided and estimated over a 30-year period) are:

- Total Net Present Value: £2,160 m
- Business Net Present Value: £1,866 m
- Net cost to business per year: -£97.451 m

(Where Net Present Value = Total Present Value Benefit – Total Present Value Cost)

165. The aggregate Net Present Value of the draft Water Bill measures as a whole may be underestimated to the extent that certain other benefits have not been able to be expressed in monetary terms.
166. The Government does not anticipate any increase in public expenditure as a result of the draft Water Bill; it is more likely, because of the deregulatory nature of many of the measures, that public expenditure will reduce to varying degrees. For example:
- All public bodies will be able to put their water supply arrangements out to tender and thereby reduce their costs and introduce efficiencies by switching to a single supplier or negotiating a service package that better meets their business needs. The Scottish public sector is set to save around £20 million over three years from collectively tendering its water and sewerage services under current arrangements in Scotland.
 - Any public sector projects requiring water abstraction and impoundment permits, flood defence consents or fish pass approvals will benefit from reduced administration costs with their incorporation into the Environmental Permitting Regime. This should also reduce the administrative costs of the Environment Agency.
 - Repealing the legal obligation for the Environment Agency to maintain an unused record of the location of resource mains, discharge pipes and waterworks vested in the Agency and to make these maps available for public inspection, should make a saving of around £10,000 per annum in administrative costs.

PUBLIC SECTOR MANPOWER

167. As with the effect on public expenditure the draft Water Bill does not anticipate any dramatic change to public service manpower and it is more likely that, because of the deregulatory nature of the Bill, that public sector manpower could reduce slightly. However, there are no specific figures to support this and therefore it is most likely that there will be no impact.

SUMMARY OF THE IMPACT ASSESSMENT

168. The draft Water Bill's measures, where necessary, all include separate impact assessments, of which there are 10, and for ease a Summary Impact Assessment has been provided. The Summary Impact Assessment is not a conventional impact assessment and is instead designed to enable readers to quickly assess the key aspects of the Bill measure's impact assessments and the aggregate totals of any monetary values. The summary includes an outline of what the measure is aiming to achieve, the possible options considered, the costs and benefits of the preferred option, the scope of One-in One-out methodology and what it qualifies as and the Regulatory Policy Committee's RAG opinion.
169. With the exception of the repeal of Section 195 of the Water Resources Act 1991 (Maps of Environment Agency waterworks) all are within the scope of the 'One-in One-out methodology' to identify any new net costs to business from regulatory measures. All of the impact assessments have been marked as either "Out" or "Zero Net Cost". Also, with the exception of this impact assessment and *Charging for water and sewerage infrastructure within new developments* all have been reviewed by the Regulatory Policy Committee.
170. The Bill Minister has seen and cleared all of the draft Water Bill's impact assessments, including the Summary, and where necessary has received the Regulatory Policy Committee's opinion letters.
171. The full individual impact assessments for the draft Water Bill are available on the Defra website at: www.defra.gov.uk/environment/quality/water/legislation/water/

COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

172. The Government has examined the compatibility of the provisions in the Bill with the Convention. In particular, the Government has considered potential arguments that opening up the market to competition interferes with the economic interests of current water suppliers, and that allowing access to their water supply and sewerage systems is a disproportionate interference with their property rights. The Government believes that the Bill's provisions are compatible with the Convention. Broadly, there is either no property right which enables undertakers and licensees to prevent the liberalisation of a market or if there is such a right, promoting efficiency and consumer interests justifies the interference. Ofwat's enforcement powers can be exercised compatibly with Convention rights and are necessary in order to give effect to the liberalising measures in the Bill.

COMMENCEMENT DATES

173. The general and final provisions and most of the commencement provisions come into force on Royal Assent. The powers to repeal the threshold requirement in relation to water supply licensing, and two minor consequential amendments correcting errors in the WIA come into force two months after Royal Assent. The remaining provisions come into force when relevant powers are exercised under the Bill, or by Commencement Order made by the Secretary of State.

SECTION 6 – SUMMARY IMPACT ASSESSMENT

Introduction

What is the problem?

1. In December 2011 the Government published its Water White Paper, *Water for Life*²⁶, and supporting documentation from the Environment Agency on the *Case for Change*²⁷. The Case for Change concluded that:
 - **Water resources are already under pressure.**
 - **We can expect a future with less water available for people, businesses and the environment.**
 - **Future pressures will not be limited to the south and east of England.**
 - **Over the longer term climate change could have a bigger impact on available water resources than population growth.**
 - **The water environment will change.** We will need to reconsider the requirements for future water ecosystems and the implications for the amount of water available for abstraction.
 - Demand management will have an important role to play, **but we may need significant new water resources to be developed.**
 - **Solutions will have to be found at both a local and strategic level** as even where a river basin may have enough water, local catchments within it might not.
2. The White Paper described a vision for future water management in which the water sector is more resilient; water companies are more efficient and customer focused; and water is valued as the precious resource it is. The Government set out in the White Paper the changes that are needed now to keep the country's water supplies reliable and affordable in a way that protects the environment while also stimulating the water sector to greater innovation and better customer service.
3. Building on the recommendations of Martin Cave's *Independent Review of Competition and Innovation in Water Markets*²⁸ and the *Review of Ofwat and Consumer Representation in the Water Sector*²⁹, the White Paper set out plans to reform the current markets in water and sewerage and to amend Ofwat's powers to regulate the market; as well as some further proposals to reduce regulatory burdens in water resource management. As delivery of these commitments requires primary legislation, the Government also committed to publishing a draft Water Bill:

"We will publish a draft Water Bill for pre-legislative scrutiny in early 2012 and introduce a Water Bill as soon as Parliamentary time allows."

Territorial Extent

4. The draft Water Bill's measures mainly cover England and Wales, but the aim is to build a joint water and sewerage retail market with Scotland (Scotland already has a functioning competitive retail market in place). The following impact assessments apply only to England: Upstream Competition (Defra 1347); Introducing Retail Competition in the Water Sector (Defra 1346); and Extending the Environmental Permitting framework to flood defence consents (Defra 1394) The remainder apply to England and Wales.

26 <http://www.defra.gov.uk/environment/quality/water/legislation/whitepaper/>

27 <http://www.environment-agency.gov.uk/research/planning/135501.aspx>

28 <http://www.defra.gov.uk/publications/2011/12/06/cave-review/>

29 <http://www.defra.gov.uk/publications/2011/07/06/pb13587-ofwat-review-2011/>

Policy Proposals

5. The draft Water Bill covers three broad policy areas:
 - Market reform to increase competition in the water sector and deliver benefits to customers;
 - Water resources; and
 - Expansion of the Environmental Permitting Regulations
6. Section three provides a broad outline of each policy, explaining the linkages between the measures in the Bill and their cumulative impact (if applicable); it also includes a summary table showing the costs and benefits of the preferred option.
7. Each of the measures has a supporting Impact Assessment which sets out the problem; rationale for action; options; and costs and benefits for each option.
8. A summary of these Impact Assessments is included in Section three and a table of the “Cost of Preferred Option” (including the assessment for the “One In One Out” regulatory regime) is presented in Section four alongside, where necessary, the Regulatory Policy Committee’s Opinion in the form of a RAG (Red Amber Green) rating. The individual Impact Assessments accompany this summary and can be studied in detail if more information is required.

Policies and Measures

Policy: Market Reform

9. In February 2008, the UK and Welsh Governments commissioned Professor Martin Cave to lead an *Independent review of Competition and Innovation in Water Markets*³⁰. The Review’s principal purpose was to examine the case for introducing competition to increase efficiency of water use, drive innovation and deliver tangible benefits to both businesses and households.
10. The review acknowledged that in the 20 years since privatisation the Water Services Regulation Authority’s (Ofwat) framework for regulating regional monopolies had delivered a range of benefits, including service and quality improvements and reduced bills. However it concluded that alternative approaches and new ways of working, including a measured introduction of competition, were required to meet the future challenges facing the sector.
11. The Water White Paper considered the future of the water industry in the context of the challenges facing the sector including the need to address climate change, demographic change, high customer expectations and the need for greater customer focus while keeping bills affordable.
12. Taken together, these challenges will place a requirement on the industry to find new and more efficient ways of allocating, treating and using water. This is important not only to ensure that supply and demand are balanced, but also to protect the environment by first using less inputs (for example energy, chemicals) and also by reducing the need for new infrastructure (for example new supply investments) by considering other cheaper and environmentally friendly options (for example sharing through inter-connections, catchment management to improve water quality etc.). This will ultimately protect consumers by minimising the cost to them of meeting the challenges.

30 <http://www.defra.gov.uk/publications/files/cave-review-final-report.pdf>

13. Under the current arrangements efficiency in the industry is almost totally driven by Ofwat's economic regulation. Although this approach has delivered savings, the challenge today is that the rewards for outperformance are relatively modest and the risks from failure are high. Accordingly the Water White Paper recommended reforms to both the regulatory and legislative frameworks of the water sector to encourage the industry to become more innovative so that it is better able to anticipate manage and respond to the challenges.
14. The measures in the draft Water Bill are designed to: introduce greater clarity within the Special Merger Regime; amend the legislation covering the Water Supply Licensing regime in order to remove barriers to effective competition; reform the handling of new appointees and of existing appointees involved in the inset process to make the market more attractive to new entrants; improve the regulator's existing enforcement tools; reduce the bureaucracy around water companies' charges scheme to promote greater innovation; and provide a new charging framework for new water supply and sewerage connections.

Measure: Reform of the Water Special Merger Regime

15. The current water special merger regime involves uncertainty and unnecessary costs for water companies considering a merger. This is due to lack of knowledge of the methodology that would be adopted by Ofwat in assessing the implications for comparative regulation and the fact that the Office of Fair Trading (OFT) is unable to accept undertakings from the merging parties to remedy or mitigate any prejudicial effects of a merger and is obliged to refer all qualifying mergers to the Competition Commission (CC). Government intervention is required to remove these barriers and burdens and make it easier for water companies to evaluate the costs of a potential merger.
16. The policy objective is to provide greater clarity to water companies that wish to merge, bring the regime into closer alignment with the general merger regime whilst retaining the ability for comparative competition to continue to play an important role in merger decisions. As competition in the sector develops, the OFT (and its successor body) will separately be able to make referrals to the CC if it believes that mergers between water companies not caught by the reformed special merger regime might have an impact on competition in the sector.

Policy options considered

Option 0 – do nothing (base case)

Option 1 – require Ofwat to publish guidance on how it would assess the loss of a comparator;

Option 2 – require Ofwat to publish guidance on how it would assess the loss of a comparator; and the introduction of a first stage merger test by the OFT (informed by the Ofwat guidance) and the introduction of powers whereby OFT can accept undertakings from water companies in lieu of a reference to the CC. This is the preferred option.

Measure: Retail Competition in the Water Sector

17. The water and sewerage industry in England consists of vertically integrated regional monopolies. Although the current form of price cap (RPI – X) regulation has been successful, the sector is facing new challenges which demand reform. To meet these challenges the Water White Paper, building on the *Independent Review of Competition and Innovation in Water Markets* led by Martin Cave, recommended a series of reforms to facilitate effective retail competition for non-households. Intervention is necessary as there are a number of barriers to competition in legislation.
18. The policy objective is to put a framework in place which enables all business customers in England to choose their water and sewerage retailer. The intended effect is that all non household customers will have the opportunity to switch suppliers, and that actual or the threat of competition will incentivise companies to provide improved and more innovative services, improve efficiency and reduce costs to customers. Businesses operating on

multiple sites could receive a single bill instead of dealing with a range of individual water companies. This is in contrast to the current arrangements where non household customers are largely tied to the regional monopoly supplier, and efficiency and customer service levels are driven by targets set by Ofwat with very limited scope for business customers to demand their own bespoke arrangements.

19. All Acts are subject to a post legislative review four years after receiving Royal Assent. The review will consider whether or not the policy has achieved its objectives and if not how this can be remedied; the rationale for intervention and if it is still valid; and the extent to which the assumed costs and benefits have materialised and any unintended consequences.

Policy options considered

Option 1 – do nothing (base case)

Option 2 – WSL & legal separation: Reforming the Water Supply Licensing (WSL) regime and mandating the legal separation of companies' retail and wholesale functions for all those companies serving more than 50,000 customers.

Option 3 – WSL & functional separation: Reforming the WSL regime and mandating the functional separation of companies' retail and wholesale functions for all those companies serving more than 50,000 customers.

Option 4 – WSL & optional separation: Reforming the WSL regime and giving companies the option of separating their retail and wholesale functions to enter the competitive market.

Option 5 – WSL only: Introducing a package of reforms to the Water Supply Licensing (WSL) regime without any separation of the companies' retail and wholesale functions. This is the preferred option.

Measure: Upstream Competition

20. Since its inception in 2005, the number of WSL licences granted has grown and there are currently seven licensees, two of which are new entrants and five of which are subsidiaries of the existing incumbent water companies. However, activity in the regime has been limited, only one customer has switched supplier in six years and there are no upstream combined supply arrangements currently operating.
21. The policy objective is therefore to promote upstream competition in relation to water and sewerage. The intended effects are to reform the existing competition regimes which have proven to be ineffective at facilitating competition. The reforms are expected to encourage market entry and deliver more effective competition by:
 - Removing barriers to entry;
 - Improving the transparency of the market opportunity for potential entrants;
 - Addressing issues of information asymmetry; and
 - Increasing the size of the market opportunity for potential entrants.
22. Effective upstream competition is expected to promote more efficient allocation of water and achieve better outcomes for consumers and the environment.
23. All Acts are subject to a post legislative review four years after receiving Royal Assent. The review will consider whether or not the policy has achieved its objectives and if not how this can be remedied; the rationale for intervention and if it is still valid; and the extent to which the assumed costs and benefits have materialised and any unintended consequences.

Policy options considered

Option 1 – Do nothing: The existing arrangements persist but Ofwat may implement some adjustments using its existing powers to regulate water companies without legislative change.

Option 2 Upstream water and sewerage licences: This includes a package of reforms to the existing WSL regime to encourage effective competition in the provision of new water and sewerage treatment capacity and water resources. Benefits are delivered in the form of lower prices to consumers and environmental improvements, major areas of risk/cost are around the potential impacts on the future cost of borrowing.

Option 3 – Upstream water and sewerage licences and network licences: This includes all of the changes in option 2 as well as a new network licence that would replace the existing NAV regime and deliver additional benefits by reducing the regulatory costs faced by entrants in that regime as a result of site-by-site application. This is the preferred option.

Measure: Updating Ofwat's Enforcement Powers

24. The policy objective is to strengthen the ability of Ofwat to regulate the industry in the interests of consumers by improving their enforcement tools. When water companies breach their conditions of appointment, licence or statutory provisions, it can have a detrimental impact on customers through reduced customer service and potential increases to bills. When imposing a financial penalty on a water company for such a breach, Ofwat are not always able to calculate the appropriate penalty to recompense for the impact of the breach as the investigation period is restricted to 12 months from a breach or failure occurring.
25. An extension to five years will give Ofwat a greater ability to fully consider the nature and implications of breaches therefore enabling a more accurate assessment of penalties. It will also enable Ofwat to investigate and impose penalties (if necessary) on breaches that have not come to light until the 12 month period has elapsed. This will provide a strong deterrent to future non compliance and could reduce the number of breaches as companies will be aware that penalties will reflect the full nature and impact of the breach. This protects customers and also ensures that companies do not profit from a breach.

Policy options considered

Option 0 – Do nothing (base case)

Option 1 – A change to primary legislation to address a specific deficiency in the existing enforcement regime: the time limit for pursuing contraventions. Two sub options considered: extension to two years or five years. This is the preferred option.

Measure: Changes to the approval process for water company charges schemes

26. Legislation requires that all water companies have their charges scheme approved by Ofwat each year (this is in addition to the quinquennial Price Review which caps charges). Water companies see this as a barrier to tariff innovation, while Ofwat regards it as a barrier to light-touch regulation, placing unnecessary burdens on compliant companies and encouraging behaviours driven by the regulator rather than the customer. The Ofwat Review recommended that Ofwat reduce the regulatory burden it places on the water industry and incentivise more innovative, customer-focused behaviours. The Water White Paper responded with commitments to support Ofwat in this.
27. In line with this Ofwat will move to a risk-based approach to regulate charges, allowing them to deploy their resources in an efficient, proportionate manner.

Policy options considered

Option 1 – do nothing (base case)

Option 2 – Revise the guidance from the Secretary of State on the approval of charges and introduce a licence modification to allow Ofwat to set rules for charging, which would allow a limited move to ex-post checks.

Option 3 – Remove Ofwat’s function of approving charges schemes contained in section 143(6)-(9) of the Water Industry Act 1991 (WIA91). Give Ofwat a general power to set rules for charging under WIA91, consistent with the transparent access pricing rules intended to replace the cost principle with a risk-based approach to ensuring compliance with guidance and price limits. This is the preferred option.

Measure: Charging for water and sewerage infrastructure within new developments

28. Recent reviews and feedback from stakeholders have identified difficulties in the way water and sewerage companies recover the cost of the additional water and sewerage infrastructure needed to support new developments. Developers and water and sewerage companies find the current charging framework complex, unclear and a barrier to greater competition. Therefore, existing arrangements have led to a large volume of disputes on charges with many cases being referred to Ofwat for determination.
29. The policy objective is to provide a new charging framework that will facilitate improved cost reflectivity, the efficient use of resources and fair competition; by simplifying processes for developers it will help stimulate growth. The new charging framework should improve clarity and coherence with other related charging schemes. This should enable a reduction in the overall administrative burden of charging for new development. The new charging framework needs to be readily adaptable to future market changes. The regime should be designed to incentivise development to be located in areas where there is capacity in existing infrastructure, or where the cost of providing additional infrastructure is lower than at alternative sites.

Policy options considered

Option 1 – attempts to resolve problems by the regulator (Ofwat) issuing further guidance, this approach has been attempted but problems remain. Many of the problems relate to detailed provisions which are set in primary legislation where there are very limited opportunities for change. It is considered that a more fundamental change is now required.

Option 2 – replaces the current primary legislation with a power to make regulations which would set out a detailed charging framework.

Option 3 – puts a duty on Ofwat (through primary legislation) to introduce rules on a charging framework. This is the preferred option.

Table One: Market Reform Costs and Benefits³¹

Measures	Costs	Benefits	Net Benefit
<p><i>Reform of the Water Special Merger Regime</i></p>	<p>The costs to Ofwat of publishing guidance are expected to be small.</p> <p>Under the proposed reforms, the first stage test becomes potentially more substantive thereby increasing the cost to companies. For smaller water only companies the range of costs for a first stage test could be between £50k to £250k but we cannot at this stage be sure. However, this cost needs to be viewed alongside that associated with a full Competition Commission (CC) referral, which now might not be necessary, and could range from £50k up to £1m. However, we cannot accurately state what these costs might be as we cannot know which water companies (or how large they are) might be considering a merger.</p> <p>There is a possibility that the proposals could increase the time and, perhaps to a lesser extent, costs of a merger in a situation where the Office of Fair Trading (OFT) still decide (after the first stage test) to refer a case to the CC. However, water companies would be better informed of the chances of success at earlier stages and would have the choice as to whether to pursue the merger reference and any additional costs would be avoided if they chose not to. Furthermore, we would not expect analysis at the OFT “first stage test” to be nugatory; it would in practice be expected to inform any subsequent CC assessment, yielding some saving in both time and costs at that stage.</p>	<p>The reform will introduce greater transparency and give water companies greater certainty over the way in which future mergers will be considered. In addition, a first stage test with a power to accept undertakings to mitigate against the loss of a comparator could potentially reduce costs, particularly for smaller water only companies in looking to merge.</p> <p>Removal of this uncertainty might lead to increased merger activity, though the threshold for referral of mergers to OFT will remain the same so the general level of scrutiny will be streamlined rather than loosened. (Potential changes to threshold for OFT scrutiny are being considered separately).</p>	<p>Costs and benefits have not been estimated in money terms for introduction of a first stage test because we cannot know which companies might be considering a merger. However, the benefits of transparency and the potential efficiency of the first stage test are judged very likely to more than outweigh the small costs of introducing the proposal.</p>

³¹ General note to Table One: Where monetary values are quoted with the suffix “PV” these are Present Value (discounted) totals over a 30-year period. Please see the Impact Assessments for individual measures for more detail.

<p><i>Retail Competition in the Water Sector</i></p>	<p>The primary costs under this option relate to those incurred by the regulator to set up the necessary market arrangements. This includes setting up and operating the market settlement and switching infrastructure (estimated at £79m as a Present Value (PV) over 30 years); and designing and administering the new arrangements (£75m PV).</p> <p>Additionally incumbent companies will incur some ongoing costs under the new arrangements (£34m PV) and would also be expected to incur costs in order to retain and attract customers (£52m PV).</p>	<p>The primary benefit is that incumbents are incentivised to seek out productive and dynamic efficiency savings in relation to the provision of non-household retail services (£64m PV). This would also be expected to generate efficiency savings in relation to the provision of non-household retail services (£230m PV). In addition greater upstream pressure from retailers would generate wholesale efficiencies (£100m PV) and some water efficiencies would also be realised (£31m PV).</p>	<p>Best estimate: £190m <i>Present Value over 30 years</i></p>
<p><i>Upstream Competition</i></p>	<p>Ongoing costs to the government and regulators will be minimal but additional work will be required by Ofwat and the quality regulators (EA and DWI) to ensure applicants are fit to hold new upstream water and sewerage licences and in administering the regime but these will be incremental to the costs incurred in relation to the regime that already exists (c.£2.7m per annum). Companies will incur minor ongoing compliance costs (c.£1m per annum). There may be an increase in the ongoing cost of borrowing in the sector as a result of these reforms which represents the most significant area of cost (c.£210m-£1,053m PV over 30 years) and reflects Ofwat's decision regarding protection of maintenance on RCV.</p>	<p>The key monetary benefits arise from the one-off productive and ongoing dynamic efficiencies against the likely future investments in upstream water and sewerage services. These savings accrue to incumbent water companies in the first instance who avoid incurring new full economic costs in the upstream business and are then passed on to end customers in the form of lower bills. The major areas of benefit are the one-off productive efficiencies arising from competition (£1,790m PV) and the ongoing dynamic efficiencies arising from competition (£659m PV).</p> <p>The key non-monetary benefit is that the current New Appointments and Variations regime will be replaced by a network licence. This will make it easier for new entrants to compete with incumbents to provide network services (i.e. to developers) because they no longer need to do an application for every site that they wish to serve. This will also reduce Ofwat's costs because they won't need to assess each NAV application on a site by site basis.</p>	<p>Low: £-225m High: £3,377m Best estimate: £1,952m <i>Present Value over 30 years</i></p>

<p><i>Updating Ofwat's Enforcement Powers</i></p>	<p>There are no monetary costs associated with this option. Water Companies are under a statutory duty to supply Ofwat with financial information and evidence relating to compliance with licence conditions. Therefore there are no additional burdens or costs on companies. The extension to five years merely enables Ofwat to act appropriately in cases where evidence of a breach is identified more than 12 months after it occurred; and in cases where there have been repeated or prolonged instances of the same breach.</p> <p>Ofwat does not believe that the change to the time limit will materially impact the level and depth of analysis required in individual cases, or result in a change in the number of contraventions which Ofwat investigates.</p> <p>There is therefore no anticipated additional staff cost to Ofwat. The change will not introduce new obligations on companies, so Ofwat does not consider that it will materially impact on the administrative burden placed on water companies in the day-to-day running of their business. The only financial impact will be on companies responsible for infringements (who could – rightly – face larger penalties).</p>	<p>Due to a high degree of variability in the type and scale of cases and no adequate means of calculating the likelihood or frequency of contraventions by companies it hasn't been possible to assign specific monetary values.</p> <p>Neither has it been possible to estimate the increased value of historic penalties had the 12 month investigation restriction not applied. This is due to the amount and scope of information collected in each case did not take into account contraventions and impact over a longer timescale.</p> <p>Ofwat have imposed eight financial penalties totalling £74.3m since gaining powers in 2005. In all cases the penalty did not take into account the full extent of the contravention due to the time limit imposed. In addition in two further cases a financial penalty could not be applied due to the 12 month restriction. By making changes it would enable Ofwat to impose a more accurate penalty that reflected the nature, scale and impact of a breach, ensure more compliance with better regulation principles and natural justice, provide a greater deterrent to companies and remove the incentive to delay notification of a breach. Customers would benefit as companies will be more accountable when they contravene licence conditions, to the extent that companies face larger penalties and consumers receive greater compensation.</p>	<p>Costs and benefits have not been estimated in money terms for this proposal because it is not possible to predict infringements. However, the benefits of broadening opportunities for redress of infringements are judged very likely to more than outweigh the negligible costs of introducing the proposal.</p>
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<p><i>Changes to approval process for water company charges schemes</i></p>	<p>Overall, the cost of going from the current scheme to the preferred is assessed to be neutral. For the majority of water companies and Ofwat, the administrative cost of complying with a new risk-based approach under the preferred option is assumed to be broadly equivalent to the cost of complying with and monitoring the annual approval process under the current scheme. Also, the administrative resource commitment is assumed to remain constant but be better targeted.</p> <p>There is potential that non-compliant water companies may face greater scrutiny from Ofwat under a risk-based approach. As a consequence, they may incur marginally higher but more proportionate costs.</p> <p>However, it is has not been possible to assign monetary costs due to the significant variation in administrative processes adopted by companies and complexity in predicting future levels of non-compliance.</p>	<p>It has not been possible to assign monetary benefits for the preferred option due to the high degree of variability and complexity of the approval process depending on the nature of charges schemes.</p> <p>There is also no clear causal link between this measure and benefits such as tariff innovation. Rather it is designed to remove a regulatory barrier that both Ofwat and the companies regard as a brake on innovation. Compliant companies are likely to achieve a small administrative saving though this is negligible and difficult to quantify given the range of charges schemes and variability in processes.</p> <p>The value of the potential benefits significantly outweighs the costs, which we believe to be zero or negligible. The benefits are:</p> <ul style="list-style-type: none"> • Supports a more efficient and proportionate allocation of Ofwat/water company resources. The Ofwat allocation of £320k will be targeted at more risky schemes enabling them to highlight and implement corrective measures to ensure customers are not over-charged. If all companies complied with charging rules this could result in an illustrative industry wide annual administrative saving of between £1900 and £11,250. • Enhances flexibility to address compliance issues outside the annual approval window. Ofwat will be able to immediately rectify non-compliance, including compensating customers for over-charging and thereby boosting incentives for water companies to comply. 	<p>This Impact Assessment does not include monetary estimates of costs or benefits for these options. This is driven by the high level of uncertainty in predicting or projecting future costs that companies may face in complying with a risk based compliance approach. However, the efficiency, flexibility and innovation benefits are judged very likely to more than outweigh the negligible costs of the proposal.</p>
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<p><i>Charging for water and sewerage infrastructure within new developments</i></p>	<p>At this stage costs have not been given a monetary value. The eventual charging rules will have a more detailed Impact Assessment, and will be subject to separate consultation.</p> <p>There will be some further one-off administrative costs associated with developing the legislation, but overall the proposal will lead to cost savings for Ofwat, water and sewerage companies and developers.</p>	<ul style="list-style-type: none"> Removes a significant barrier to development of innovative tariffs. 55% of water companies claim the annual approvals process is a barrier to tariff innovation. In conjunction with other measures, the removal of this barrier could realise potential benefits of £25.6 million to customers in the development of social tariffs. Ofwat estimate that innovative tariffs could reduce water demand by up to 10% resulting in costs savings of up to £40 per annum in reduced bills. Significantly improves consistency with recommendations of Ofwat Review, BIS principles of economic regulation and Water White Paper. Enables Ofwat to adopt a light-touch, risk-based regulatory approach consistent with the Principles of Economic Regulation, Ofwat Review and White Paper. 	<p>This Impact Assessment supports the case for change. At this stage it does not attempt to calculate costs and benefits, as the proposed option will make no change to the existing charging framework until a new framework is developed and introduced.</p>
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Policy: Water Resources

30. Water Resources covers a whole plethora of topics and policies from abstraction licensing (the taking of water supplies from watercourses) through to drought. In the Water White Paper the Government committed to reform of the abstraction licensing system. This will require further primary legislation in due course, but is not being pursued through this Bill. The measures included in this Bill are designed to repeal redundant legislation that requires the Environment Agency to maintain certain records of maps and reduce burdens on water undertakers by aligning drought planning with the water resource management planning cycle.

Measure: Maps of Agency waterworks – repeal section 195 of the Water Resources Act 1991

31. The Environment Agency is required to keep and maintain records in the form of maps showing resource mains, discharge pipes and waterworks vested in the Agency and to make these maps available for public inspection. As this is an unused record of maps, and there are other overriding legal obligations on the Environment Agency to disclose information, the aim is to remove this particular, redundant legal obligation as part of a programme to reduce bureaucracy and red tape. The effect will deliver a small efficiency and cost saving to the Environment Agency.

Policy options considered

Option 0 – Do nothing: would leave the provision and obligation in place even though the records are unused and potentially duplicated by other general estate records. This would also prevent a modest efficiency and cost saving from being realised.

Option 1 – Repeal this provision through legislation. This is the preferred option.

Measure: Statutory drought and water resources planning by water undertakers: frequency of the planning cycle

32. Water undertakers have a statutory duty to provide adequate supplies of water for domestic purposes. A recent independent review of the water resources planning process³² recommended that the Government should seek better alignment of the plans. Therefore, we propose to achieve this by extending the planning cycle of drought plans to five years.
33. The ongoing policy objective is to ensure that water undertakers are able to meet their supply duties, including during a drought. By changing the frequency of drought plans water companies will be able to use the information from up to date water resources plans to feed through into their drought plans, ensuring consistent data and better alignment. In addition, we will avoid circumstances in which both plans become due at the same time, creating a significant peak in regulatory burden for companies. By taking a power to make future changes through secondary legislation we will be able to ensure these plans remain aligned with other statutory plans such as the periodic review by Ofwat, into which the WRMP feeds.

Policy options considered

Option 0 – do nothing (base case): If we do nothing, companies will still prepare effective plans but the planning cycles will remain out of alignment and will, at some point in future, fall due for completion at the same time, creating a significant burden. To avoid the plans coinciding the Secretary of State could use powers to Direct earlier completion of plans but this would mean bringing forward a burden when the planning requirement itself does not need it.

Option 1 – change the frequency of drought plans to five yearly and so achieve better information alignment and reduce the risk that plans will fall due at the same time. A power to make further changes by secondary legislation will enable us to continue to keep the plans aligned with other statutory processes such as Ofwat's price review and ensure the optimal flow of information and minimise duplication of effort by the companies. Water companies welcome this move. This is the preferred option.

32 <http://www.defra.gov.uk/publications/2011/09/30/pb13653-water-resources/>

Table 2: Water Resources Costs and Benefits

Measures	Costs	Benefits	Net Benefit
<p><i>Maps of Agency waterworks – repeal section 195 of the Water Resources Act 1991</i></p>	<p>The Environment Agency would be the only directly affected body and does not expect any costs to arise from the repeal provision.</p> <p>The general public will not be affected as no use has been made of these records and other routes to access and disclose the prescribed information are available. No new or additional costs will therefore fall on them as they are not affected by this proposal.</p>	<p>The Environment Agency should realise a small cost and efficiency saving (estimated to be £0.01m) each year as unnecessary duplication is removed.</p>	<p>Best estimate: £0.20m (£0.09m)</p> <p><i>Present Value over 30 years with 10 year figures in brackets</i></p>
<p><i>Statutory drought and water resources planning by water undertakers: frequency of the planning cycle</i></p>	<p>No new or additional costs will affect the water undertakers, inset appointees or regulators. The only other non-monetary cost will be that, on average, plans will be slightly older.</p>	<p>The key monetary benefits are the savings that will arise (staff time, modelling costs, consultation costs) by water undertakers having to prepare plans less frequently. Estimated savings are based on savings for the 24 water undertakers and are based on average cost per company per plan. If the costs are spread over a 5 yearly cycle rather than 3.5 yearly cycle estimated savings over a 10 year period are £2.20m undiscounted total saving.</p> <p>Also by aligning the plans to a five yearly cycle it will avoid water resource and drought planning requirements coinciding and creating a peak administrative burden.</p>	<p>Best estimate: £4.05m (£1.830m)</p> <p><i>Present Value over thirty years with 10 year figures in brackets</i></p>

Policy: Environmental Permitting Regulations

34. The Environmental Permitting Regulations (EPRs) are a common framework for environmental consents, with the aim of minimising administrative burdens without affecting environmental protection standards or policies. The EPRs came into effect in April 2008 when part of the Environmental Protection Act 1990, the Waste Management Licensing Regulations 1994 and the system of permitting in the Pollution Prevention and Control (England and Wales) Regulations 2000 were replaced with a new system of environmental permitting in England and Wales. Since then it has been expanded to encompass a wide range of related, but previously separate, Environment Agency and local authority consenting regimes, to deliver a flexible, risk-based single regime for businesses and others.
35. The recent Penfold Review of non-planning consents³³ recommended expanding the environmental permitting regime to cover other non-planning consents. In general this will not change the substantive requirements of permits, but is expected to reduce the administration necessary to deliver those requirements. The benefits are, therefore, generally expressed in terms of savings in administrative costs.

Measure: Extending the Environmental Permitting framework to incorporate water abstraction and impoundment licensing and fish pass approvals

36. Existing environmental permitting regimes have previously developed largely in isolation and have, often for good reasons at the time, adopted a variety of approaches to controlling different types of activity even where they are undertaken on the same site. This has led to a system of regulatory control with elements of duplication, which is complex for industry, regulators and others and may act as a barrier to entry for new businesses. Government intervention is necessary to add water abstraction and impoundment licensing and fish pass approvals into the Environmental Permitting framework to reduce the administrative costs of environmental regulation while continuing to achieve the intended outcomes.
37. Adding Water Abstraction and Impoundment and Fish Pass Approvals will reduce the current administrative costs to businesses and facilitate more cost-effective implementation of new directives.

Policy options considered

Option 0 – do nothing: This models the status quo, where the Water Abstraction and Impoundment and Fish Pass Approvals regimes remain outside the Environmental Permitting framework.

Option 1 – is for the regimes to be incorporated within the Environmental Permitting framework. This is expected to cut unnecessary red tape, to continue to protect the environment and human health, and to increase clarity and certainty for all stakeholders on how the system protects the environment. This is the preferred option.

Option 2 – is for non-legislative changes to be made to the regimes. This option aims to replicate some of the benefits associated with environmental permitting by providing clearer guidance to applicants, but without any associated legislative change.

33 <http://www.bis.gov.uk/penfold>

Measure: Flood Defence Consents

38. Current legislation requires consent by regulators for certain works on or near watercourses which may affect flood risk. These consenting requirements can add to the administrative burdens of public, business and developers' projects. There is also some duplication with other planning and non-planning permit regimes. The numbers and extent of these regimes can be complex for both industry and regulators, and may act as a barrier to new business developments and start-ups.
39. The policy objective is to make applications for flood defence consents easier, by removing duplication with other Environment Agency consenting schemes (and potentially those by other regulators), removing complexity from the application process, ultimately in order to remove barriers and costs to business whilst ensuring that flood risk management is not affected.

Policy options considered

Option 0 – do nothing (base line)

Option 1 – Invest to streamline flood defence consenting regime as far as existing legislation will permit.

Option 2 – Integrate the flood defence consenting regime into the Environmental permit. This is the preferred option.

Option 3 – Align the flood defence consenting regime with environmental permitting schemes of other arms length bodies.

Table 3: Environmental Permitting Regulation Costs and Benefits³⁴

Measures	Costs	Benefits	Net Benefit
<i>Extending the Environmental Permitting framework to water abstraction and impoundment licensing and fish pass approvals</i>	<p>There will be some implementation costs to the Environment Agency through process change, developing standard rules permits, amalgamating public registers, writing guidance and a temporary reduction in process efficiency; and to business, for example investing time to read guidance. A small ongoing cost is forecast for Standard Rules permits being transferred at the point of variation or apportionment for the WAI regime.</p>	<p>Mostly through reduced administrative costs for the industry (including households) and the Environment Agency.</p> <p>There are also benefits (not given a monetary value) through increased clarity and certainty and also a simplified system for transposing environmental directives.</p>	<p>Best estimate: £9.3m (£4.2m)</p> <p><i>Present Value over 30 years with 10 year figures in brackets</i></p>
<i>Extending the Environmental Permitting framework to flood defence consents</i>	<p>There will be some transitional costs to:</p> <ul style="list-style-type: none"> Environment Agency through staff training (£17k), development of new permits and guidance (£44k), upgrading IT (£150k) Internal Drainage Boards through staff training (£6k); and to applicants through time spent understanding the new system and guidance (£508-808k of which 50% to business). <p>There will also be ongoing costs to the Environment Agency of running a new system (£292-591k Present Value (PV) total over 10 years).</p>	<p>There will be savings in administrative costs to the regulators (£1.1-1.3m PV, 34%) and applicants (£2.2-2.5m PV, 66%), of which half to business), in particular from integration of permitting regimes (in 30% of cases where flood defence consents are required, other environmental permits are required) and the facilitation of simpler “standardised rules” permits for low risk situations.</p> <p>There are also non-monetary benefits for applicants through reduced resources and time needed for flood defences consents, clearer criteria ahead of publication, a single regulator, applications and permit; and for the regulator through focusing resources on high risk activities without affecting flood risk.</p>	<p>Low: £1.7m</p> <p>High: £2.8m</p> <p>Best estimate: £4.98m (£2.3m)</p> <p><i>Present Value over 30 years with 10 year figures in brackets</i></p>

³⁴ General note to Table Three: Where monetary values are quoted with the suffix “PV” these are Present Value (discounted) totals over a 30-year period. Please see the Impact Assessments for individual measures for more detail.

Other Specific Impact Tests

40. An impact assessment also involves the consideration of certain other specific impacts. These include: Net Costs to Business, Equality & Human Rights, Justice Systems, Rural Proofing and Sustainable Development. While some of these impacts were considered not to be material at individual measure level (and so are not reported in all individual Impact Assessments), this summary presents the overall picture for the draft Water Bill.

Net costs to business (including One In One Out)

41. As part of the Impact Assessment process the individual Impact Assessments have applied “One In One Out” methodology to identify any new net costs to business from the draft Water Bill’s policies and measures. All but one of the measures are within the scope of One In One Out and their assessments show that they are either considered as an “Out” or as a “Zero Net Cost” to business. This is due in part to the majority of the measures being deregulatory as they aim to introduce market reform into the water industry.

42. For the whole draft Water Bill, where monetary benefits and costs have been provided, the totals estimated over a 30-year period for all measures are:

- Total Net Present Value: £2,160 m
- Business Net Present Value: £2,079 m
- Net cost to business per year: -£108.951 m

(Where Net Present Value = Total Present Value Benefit – Total Present Value Cost)

43. A breakdown of these summary figures by measure is provided in Table Four; the vast majority of net benefit is derived from the market reform measures. Note that other measures were assessed over a 10-year period in their individual Impact Assessments; these figures have been rebased to allow consistent aggregation with the market reform estimates (see Table Four for both the original and rebased figures).

44. It should also be noted that the aggregate net present value of the draft Water Bill measures as a whole may be underestimated to the extent that certain other benefits have not been able to be expressed in money terms (see Tables One-Three above). Nevertheless, despite this, the summary aggregate figures do indicate a sound economic case for the draft Water Bill, at least over the longer term.

Equality and Human Rights Impact

45. The impacts of all the policies and their measures in the draft Water Bill are not expected to have any impact on any of the responsibilities under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation). There is also not expected to be any impact on rights under the Human Rights Act 1998 (European Convention on Human Rights). However the impact on human rights has been considered under the Retail and Upstream Competition Impact Assessments with regards to property. We do not consider that there is an adverse impact.

Justice System Impact

46. There are two measures within the draft Water Bill that have a potential impact on the Justice System. Under WSL Reform two new offences have been created of illegal access to sewer systems which will protect the integrity of the licensing regime and prevent unlicensed and unregulated activity. The impact on the courts system is expected to be negligible. No prosecutions have been made in England or Wales for the equivalent offence for water supply and no prosecutions in Scotland for either water supply or sewerage.
47. Under the provisions to extend the Environmental Permitting Regulations existing offences will be repealed and re-enacted – though we do not expect the extent of these offences to change.

Rural Proofing Impact

48. The measures in the draft Water Bill are not expected to have a disproportionate impact on rural areas. Effects may vary across individual rural areas.

Sustainable Development Impact

49. The measures in the draft Water Bill are expected to lead to more efficient use of water resources, innovative methods of sewerage treatment, reduced costs to business and benefits to the economy, and better customer service in the water and sewerage industry. We expect the Bill therefore to have a positive impact on sustainable development.

Table 4: Summary table of costs (Present Value and Costs), One In One Out and RPC opinion for the Impact Assessments

		Total Net Present Value* (£m)	Business Net Present Value* (£m)	Net cost to business per year (£m)	In scope of OIOO (Y/N)	In / Out / Zero net cost	RPC RAG
	Reform of the Water Special Merger Regime (Defra 1435)	N/A	N/A	N/A	No	N/A	RED
	Introducing Retail Competition in the Water Sector (Defra 1346)	190 [^]	161 [^]	-8 [^]	Yes	Zero	AMBER
	Upstream Competition (Defra 1347)	1952 [^]	1701 [^]	-89 [^]	Yes	Zero	GREEN
Market Reform	Updating Ofwat's Enforcement Powers (Defra 1417)	N/A	N/A	N/A	Yes	Zero	GREEN
	Changes to approval process for water company charges schemes (Defra 1455)	0	0	0	Yes	Out	TBC
	Charging for water and sewerage infrastructure within new developments (Defra 1383)	N/A	N/A	N/A	Yes	Zero	N/A
	Maps of agency waterworks – repeal section 195 of the water Resources Act 1991	0.20 (0.09*)	0	0	No	N/A	N/A
Water Resources	Statutory drought and water resource planning by water undertakers: frequency of the planning cycle (Defra 1432)	4.05 (1.83*)	4.05 (1.83*)	-0.201	Yes	Out	AMBER
	Extending the Environmental Permitting framework to water abstraction and impoundment licensing and fish pass approvals (Defra 1454)	9.3 (4.2*)	3.3 (1.5*)	-0.15	Yes	Out	AMBER
Environmental Permitting	Extending the Environmental Permitting framework to flood defence Consents (Defra 1394)	4.98 (2.25*) [^]	1.88 (0.85*) [^]	-0.1 [^]	Yes	Out	GREEN
	TOTALS:	2,160	1,866	-97.451			

Net Present Value: The term is used to describe the difference between the Present Value of a stream of costs and a stream of benefits.

Present Value: The total value of a policy, over the appraisal period, expressed in present terms by means of discounting.

*: Note that Present Value estimates are all 30-year “best estimate” figures except where indicated with * (10 year figures, as presented in the individual Impact Assessments for these measures). Please see the individual Impact Assessments for more information.

[^]: These values are for England only.

GLOSSARY OF TERMS

Bulk supply – The transfer of water from the area of one undertaker to that of another (for example a neighbouring undertaker or an inset appointee).

Cost principle – The basis for setting wholesale charges under the existing Water Supply Licensing regime.

Fish passes – fish passes are built alongside structures which would otherwise prevent fish migration up and downstream.

Incumbent – For the purposes of this document an “incumbent” is a water and/or sewerage undertaker that holds the de facto monopoly to provide services to premises in its area of appointment. It does not include inset appointees even though these too become the undertaker for the area to which they are appointed.

Inset appointees – Otherwise known as new appointments and variations regime. The term “inset” is commonly used to describe a situation where a company becomes the undertaker for an area within the area of an existing undertaker. This usually happens where the area is unserved (such as new developments) or is occupied only by large users: see section 7 of WIA.

Licensee – Holder of a water supply licence or sewerage licence.

Market codes – Used in regulated markets to set down access rules and the rights, duties and responsibilities of the market participants.

Network infrastructure – Under the Bill, network infrastructure is infrastructure belonging to a licensee which connects to the system of an undertaker for the purposes of bypassing that system before reconnecting to it. It might for example be used to remove water from a system, treat it, and return it to a later point in the system. The term may be used in relation to water supply or sewerage.

New entrant – a licensee or inset appointee or an applicant to be a licensee or inset appointee.

Retail – Or Downstream services; provides some or all customer facing services (e.g. billing, meter reading and call centre services, etc).

Retail infrastructure – Under the Bill, retail infrastructure is infrastructure belonging to a licensee which connects to the system of an undertaker for the purpose of supplying water, or sewerage services, to premises.

Sewerage licence – Under the new sewerage licensing regime this will be a licence enabling access to an undertaker’s sewerage system for the purpose of various authorisations.

Undertaker – In the context of the water supply market an undertaker is a company who has undertaken to supply water or sewerage services. (See “Incumbent”).

Water Resources Management Plans – Plans that water companies are obliged to produce every five years that set out how they aim to maintain water supplies over the next twenty five years.

Water Supply Licence – Under the new water supply licensing regime this will be a licence enabling access to an undertaker’s water supply system for the purpose of various authorisations.

ABBREVIATIONS AND ACRONYMS

CC – Competition Commission

CCWater – The Consumer Council for Water

DWI – Drinking Water Inspectorate

EPRs – Environmental Permitting Regulations

ERR – Enterprise and Regulatory Reform

GSS – Guaranteed Service Standards

NAV – New Appointments and Variations

NRA – National Rivers Authority

Ofwat – The Water Services Regulation Authority

OFT – Office of Fair Trading

PPC – Pollution, Prevention and Control

RAG – Red Amber Green

RPC – Regulatory Policy Committee

SuDS - Sustainable Drainage Systems

WIA – Water Industry Act 1991

WICS – Water Industry Commission for Scotland

WSL – Water Supply Licensing regime

WRMP – Water Resources Management Plan

WSRA – The Water Services Regulation Authority (Ofwat)



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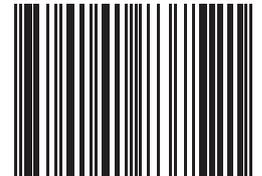
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