

A draft of these Regulations has been laid before Parliament in accordance with section 36G(1)(a) of that Act(a) and approved by a resolution of each House of Parliament.

The Secretary of State has consulted as required by section 36G(2) of that Act.

Citation, commencement, application and expiry

1.—(1) These Regulations—

- (a) may be cited as the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013;
- (b) come into force on the day after the day on which they are made; and
- (c) apply in relation to the provision of infrastructure for the use of one or more English undertakers in carrying out their duties under—
 - (i) section 37 of the Act (general duty to maintain water supply system etc.), or
 - (ii) section 94 of the Act(b) (general duty to provide sewerage system) as supplemented by paragraph (1) of regulation 4 of the Urban Waste Water Treatment Regulations 1994(c) (duty to provide and maintain collecting systems and treatment plants),including those duties as modified by virtue of these Regulations.

(2) Regulations [4(1)] and [8(1)] cease to have effect at the end of the period of seven years beginning with the day on which these Regulations come into force.

(3) If the powers in regulations [4(1)] or [8(1)] have not been exercised before the end of that period, the other provisions in these Regulations also cease to have effect at the end of that period.

Interpretation

2. In these Regulations—

“the Act” means the Water Industry Act 1991;

“English undertaker” means a relevant undertaker whose area is wholly or mainly in England;

“the incumbent undertaker” means the relevant undertaker whose ability to provide services for its customers, but for the exercise of the powers of the Secretary of State or the Authority under or by virtue of these Regulations in relation to a particular infrastructure project, would be threatened by that infrastructure project.

“infrastructure” means infrastructure relating to the provision of a system of—

- (a) sewers or the provision of means for emptying, or dealing effectually with the contents of, sewers, or
- (b) water supply or the securing of supplies of water;

which is provided or to be provided for the use of one or more Welsh undertakers are exercisable by the Welsh Ministers. See the definition of “Welsh undertaker” in section 36E(2)(b) of the Water Industry Act 1991. The functions of the Secretary of State under section 213 of the Water Industry Act 1991 were exercisable by the National Assembly for Wales (“the Assembly”) to the same extent as the powers to which that section applies were exercisable by the Assembly by virtue of article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry in Schedule 1 for the Water Industry Act 1991 as substituted by paragraph (e) of Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) and amended by section 100(2) of the Water Act 2003 (c. 37); there are other amendments but none is relevant. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), functions conferred on the Assembly are exercisable by the Welsh Ministers. An amendment by the Flood and Water Management Act 2010 of another enactment does not prevent the continued operation of any transfer of functions by or by virtue of the Government of Wales Act 1998 (c. 38) or 2006 irrespective of whether the amendment amends an existing function or confers a new function (see section 49(6) of the Flood and Water Management Act 2010).

- (a) Section 36G was inserted by the section 35(1) of the Flood and Water Management Act 2010.
- (b) Section 94 was amended by sections 88(2) and 97(1) and (3) of the Water Act 2003. There are other amendments but none is relevant. By virtue of section 36(2) of the Water Act 2003, each reference to the Director General of Water Services in the Act has effect as a reference to the Water Services Regulation Authority.
- (c) S.I. 1994/2841, as amended by section 120 of, and paragraph 233 of Schedule 22 to, the Environment Act 1995 (c. 25), S.I. 2003/1788, S.I. 2005/2035, S.I. 2010/675 and S.I. 2011/556.

“infrastructure project” has the meaning given in section 36A(5) of the Act;
“infrastructure provider” means a person designated under regulation [8(1)];
“specified infrastructure project” means an infrastructure project which has been specified under regulation [4(1)];

General duties with respect to the water industry

3.—(1) Paragraphs (2) and (3) have effect for imposing duties on the Secretary of State and on the Authority as to when and how they should exercise and perform their powers and duties under or by virtue of these Regulations.

(2) Section 2 of the Act(**a**) (general duties with respect to the water industry) has effect as if—

- (a) in subsection (1) (imposition of duties on the Secretary of State and the Authority), in paragraph (a)—
 - (i) after “provisions of”, there were inserted “the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 or”; and
 - (ii) at the end, for “and of licensed water suppliers” there were substituted “, of licensed water suppliers and of infrastructure providers”;
 - (b) in subsection (2A) (primary duties), in paragraph (d) (securing activities of licensed water suppliers are properly carried out), after “licensed water supplier”, there were inserted “or infrastructure provider”;
 - (c) subsection (2E) (regard to be had to consumers of other utilities) were repealed;
 - (d) in subsection (3) (secondary duties)—
 - (i) in paragraph (a) (promoting of economy and efficiency), at the end, there were inserted “and infrastructure providers in the carrying out of the statutory functions imposed on them in consequence of their licences”;
 - (ii) in paragraph (b) (securing no undue preference), after “companies”, there were inserted “or infrastructure providers”; and
 - (iii) in paragraph (d) (protecting consumers from non statutory activities), each time they appear in the chapeau and sub-paragraph (ii)—
 - (aa) after “company”, there were inserted “or infrastructure provider”; and
 - (bb) after “relevant undertaker”, there were inserted “or infrastructure provider respectively”;
 - (e) in subsection (5) (meaning of water and drainage charges), after “undertaker” (each time it appears), there were inserted “or infrastructure provider”; and
 - (f) in subsection (5A) (meaning of “consumers” and “interests of consumers”)—
 - (i) in the definition of “consumers”, at the end, there were inserted “and, in relation to an infrastructure provider, excludes its incumbent undertaker”; and
 - (ii) in the definition of “the interests of consumers”—
 - (aa) at the end of paragraph (a), “and” were repealed; and
 - (bb) after paragraph (a), there were inserted—
 - “(aa) the carrying out of any of the statutory functions imposed on infrastructure providers in consequence of their licences; and”.
- (3) In section 219 of the Act(**b**) (general interpretation), subsection (1) has effect as if—
- (a) in the definition of “customer or potential customer”—

(a) Section 2(1) to (5A) was amended by section 39(1) to (5) of the Water Act 2003. There are other amendments but none is relevant.

(b) Section 219(1) was amended by section 101(1) of, and Schedules 7 and 8 to, the Water Act 2003, and by S.I. 2009/1947. There are other amendments, but none is relevant.

- (i) after “Act”, there were inserted “or an infrastructure provider”;
- (ii) for paragraph (a), there were substituted—
 - “(a) any person for or to whom—
 - (i) that company provides any services in the course of carrying out the functions of a water undertaker or sewerage undertaker (other than a licensed water supplier); or
 - (ii) that infrastructure provider provides any services in the course of carrying out the statutory functions imposed on it in consequence of its licence (other than its incumbent undertaker); or”; and
 - (iii) in paragraph (b), at the end, there were inserted “or infrastructure provider”; and
- (b) in their appropriate places, new definitions were inserted as follows—
 - ““incumbent undertaker” has the meaning given in regulation [2] of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013;”;
 - and
 - ““infrastructure provider” has the meaning given in regulation [2] of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013;”.

Specification of infrastructure projects

4.—(1) Subject to the following provisions of this regulation, the Secretary of State or the Authority may by notice specify an infrastructure project.

(2) The Secretary of State may by notice served on the Authority delegate the Secretary of State’s power under paragraph [(1)] to the Authority.

(3) The Secretary of State or the Authority may exercise the power under paragraph [(1)] only if the Secretary of State or the Authority respectively is of the opinion that—

- (a) the infrastructure project is of a size or complexity that threatens the incumbent undertaker’s ability to provide services for its customers; and
- (b) specifying the infrastructure project is likely to result in better value for money than would otherwise be the case, including taking into account—
 - (i) the charges fixed or likely to be fixed under Chapter 1 of Part 5 of the Act(a) (financial provisions, charges); and
 - (ii) the powers of the Secretary of State under section 154B of the Act(b) (financial assistance for major works).

(4) The Secretary of State must—

- (a) subject to paragraph [(6)], before exercising the power under paragraph [(1)] consult—
 - (i) the incumbent undertaker;
 - (ii) the Authority;
 - (iii) (where any part of the infrastructure in question is or is to be in Wales) the Welsh Ministers; and
 - (iv) any other person the Secretary of State thinks appropriate;
- (b) include in any notice issued by the Secretary of State under paragraph [(1)] a description of the scope of infrastructure project; and
- (c) publish and serve on the persons mentioned in sub-paragraph [(a)] any such notice.

(5) The Authority must—

(a) The provisions in Chapter 1 of Part 5 were amended by sections 36 and 53 of the Competition and Service (Utilities) Act 1992 (c. 43), section 120 of, and Schedule 22 to, the Environment Act 1995, sections 3 to 9 and 15 of, and Schedule 3 to, the Water Industry Act 1999 (c. 9), sections 59 and 101(1) of, and Schedule 8 to, the Water Act 2003 and section 45 of the Flood and Water Management Act 2010. There are other amendments, but none is relevant.

(b) Section 154B was inserted by section 2 of the Water Industry (Financial Assistance) Act 2012 (c. 8).

- (a) subject to paragraph [(6)], before exercising the power under paragraph [(1)] consult—
 - (i) the incumbent undertaker;
 - (ii) the Secretary of State;
 - (iii) (where any part of the infrastructure in question is or is to be in Wales) the Welsh Ministers; and
 - (iv) any other person the Authority thinks appropriate;
- (b) include in any notice issued by it under paragraph [(1)] a description of the scope of infrastructure project; and
- (c) publish and serve on the persons mentioned in sub-paragraph [(a)] any such notice.

(6) Paragraphs [(4)(a)] and [(5)(a)] do not apply to the extent that the Secretary of State or the Authority respectively has consulted the persons specified in those paragraphs before these Regulations come into force.

(7) Where the Secretary of State or the Authority is of the opinion—

- (a) that the conditions in paragraph [(3)] continue to be satisfied, the Secretary of State or the Authority respectively may by notice vary their notice issued under paragraph [(1)]; or
- (b) that the conditions in paragraph [(3)] are no longer satisfied, the Secretary of State or the Authority respectively may by notice revoke their notice under paragraph [(1)].

(8) Paragraphs [(4)] and [(5)] apply to a notice issued under paragraph [(7)] as they apply to a notice issued under paragraph [(1)].

(9) The Authority must publish guidance to be followed by it in determining whether to exercise its powers under paragraphs [(1)] or [(7)].

Work done by the incumbent undertaker in relation to a specified infrastructure project

5.—(1) Subject to paragraph [(2)], the incumbent undertaker must not undertake a specified infrastructure project.

(2) Subject to paragraphs [(3)] and [(4)], the Secretary of State or the Authority may by notice permit or require the incumbent undertaker to undertake such preparatory work of such kind and for such purpose in relation to a specified infrastructure project as they may prescribe in the notice.

(3) The Secretary of State must—

- (a) subject to paragraph [(5)], before exercising the power under paragraph [(2)] consult—
 - (i) the incumbent undertaker;
 - (ii) the Authority;
 - (iii) (where any part of the infrastructure in question is or is to be in Wales) the Welsh Ministers; and
 - (iv) any other person the Secretary of State thinks appropriate; and
- (b) publish and serve on the persons mentioned in sub-paragraph [(a)] any notice issued by the Secretary of State under paragraph [(2)].

(4) The Authority must—

- (a) subject to paragraph [(5)], before exercising the power under paragraph [(2)] consult—
 - (i) the incumbent undertaker;
 - (ii) the Secretary of State;
 - (iii) (where any part of the infrastructure in question is or is to be in Wales) the Welsh Ministers; and
 - (iv) any other person the Authority thinks appropriate; and
- (b) publish and serve on the persons mentioned in sub-paragraph [(a)] any notice issued by it under paragraph [(2)].

(5) Paragraphs [(3)(a)] and [(4)(a)] do not apply to the extent that the Secretary of State or the Authority respectively has consulted the persons specified in those paragraphs before these Regulations come into force.

(6) The Secretary of State or Authority may by notice vary or revoke their notice issued under paragraph [(2)].

(7) Paragraphs [(3)] and [(4)] apply to a notice issued under paragraph [(6)] as they apply to a notice issued under paragraph [(2)].

Requirement to put specified infrastructure projects out to tender and procedure

6.—(1) The incumbent undertaker must put a specified infrastructure project out to tender.

(2) Where in relation to the specified infrastructure project—

- (a) neither the Public Contracts Regulations 2006(a) nor the Utilities Contracts Regulations 2006(b) apply,
- (b) the incumbent undertaker relies on an exemption under the Utilities Contracts Regulations 2006,
- (c) the incumbent undertaker seeks offers without a call for competition pursuant to—
 - (i) regulation 5(1A) and (2) of the Public Contracts Regulations 2006, or
 - (ii) regulation 5(2) or 17 of the Utilities Contracts Regulations 2006, or
- (d) the incumbent undertaker uses the negotiated procedure without the prior publication of a contract notice under regulation 14 of the Public Contracts Regulations 2006,

subject to paragraph (3), the provisions of the Utilities Contracts Regulations 2006 set out in the first column of the table in Part [1] of Schedule [1] (application of the Utilities Contracts Regulations 2006) apply in relation to that project.

(3) The provisions of the Utilities Contracts Regulations 2006 apply—

- (a) subject to the modifications specified in the second column of the table in Part [1] of Schedule [1]; and
- (b) as if—
 - (i) references to “the utility” were references to “the incumbent undertaker” within the meaning of these Regulations; and
 - (ii) for regulation 45 of the Utilities Contracts Regulations 2006, there were substituted the provisions set out in Part [2] of Schedule [1].

(4) The incumbent undertaker must consult the following concerning the terms on which the specified infrastructure project is to be put out to tender—

- (a) the Secretary of State;
- (b) the Authority; and
- (c) (where any part of the infrastructure in question is or is to be in Wales) the Welsh Ministers.

(5) The incumbent undertaker must consult the Authority concerning the bids received in response to the tender process; but the incumbent undertaker must determine which bid to accept (if any).

(a) S.I. 2006/5, as amended by S.I. 2007/3542, S.I. 2008/2256, S.I. 2009/2992, S.I. 2011/1043, S.I. 2011/1848, S.I. 2011/2053 and S.I. 2011/3058.

(b) S.I. 2006/6, as amended by S.I. 2007/3542, S.I. 2008/2256, S.I. 2008/2848, S.I. 2009/3100, S.I. 2011/1043, S.I. 2011/1848 and S.I. 2011/2053.

Associated companies

7.—(1) Subject to the following provisions of this regulation, an associated company of the incumbent undertaker is not permitted to bid in a tender process for a specified infrastructure project which relates to infrastructure for the use of that undertaker without the consent of the Secretary of State or the Authority issued by notice.

(2) The Secretary of State or the Authority may exercise the power under paragraph [(1)] only if the Secretary of State or the Authority respectively is of the opinion that the participation of the associated company in the tender process will not have the effect of distorting competition or breaching the principles of non-discrimination or transparency in the process.

(3) The Secretary of State must—

(a) subject to paragraph [(5)], before exercising the power under paragraph [(1)] consult—

(i) the incumbent undertaker;

(ii) the Authority;

(iii) (where any part of the infrastructure in question is or is to be in Wales) the Welsh Ministers; and

(iv) any other person the Secretary of State thinks appropriate; and

(b) publish and serve on the persons mentioned in sub-paragraph [(a)] any notice issued by the Secretary of State under paragraph [(1)].

(4) The Authority must—

(a) subject to paragraph [(5)], before exercising the power under paragraph [(1)] consult—

(i) the incumbent undertaker;

(ii) the Secretary of State;

(iii) (where any part of the infrastructure in question is or is to be in Wales) the Welsh Ministers; and

(iv) any other person the Authority thinks appropriate; and

(b) publish and serve on the persons mentioned in sub-paragraph [(a)] any notice issued by it under paragraph [(1)].

(5) Paragraphs [(3)(a)] and [(4)(a)] do not apply to the extent that the Secretary of State or the Authority respectively has consulted the persons specified in those paragraphs before these Regulations come into force.

(6) The Secretary of State or Authority may by notice vary or revoke their notice issued under paragraph [(1)].

(7) Paragraphs [(3)] and [(4)] apply to a notice issued under paragraph [(6)] as they apply to a notice issued under paragraph [(1)].

(8) In this regulation “an associated company” means either of the following—

(a) a group company;

(b) a related company.

(9) In paragraph [(8)]—

(a) a “group company” means, in relation to a relevant undertaker—

(i) any holding company or subsidiary of that undertaker, or

(ii) any subsidiary of any holding company of that undertaker,

and for this purpose “subsidiary” and “holding company” have the meanings given in section 1159 of the Companies Act 2006^(a) (meaning of “subsidiary” etc) as supplemented by Schedule 6 to that Act (provisions supplementary to section 1159); and

(a) 2006 c. 46.

- (b) a “related company” means, in relation a relevant undertaker, any undertaking in which that undertaker has a participating interest, and for this purpose—
 - (i) “undertaking” has the meaning given in section 1161 of the Companies Act 2006, and
 - (ii) “participating interest” has the meaning given in paragraph 8 of Schedule 8 (general interpretation) to the Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008(a).

Designation, licensing and regulation of an infrastructure provider

8.—(1) Subject to paragraphs [(5)], [(6)] and [(11)], the Secretary of State or the Authority may by notice designate as an “infrastructure provider” a person who appears to the Secretary of State or the Authority respectively to be wholly or partly responsible for a specified infrastructure project that was put out to tender in accordance with these Regulations.

(2) Any notice issued paragraph [(1)] may be subject to such conditions as the Secretary of State or the Authority considers appropriate.

(3) Schedule 2 (application of the Act) has effect.

(4) Subject to paragraph [(5)], the Secretary of State may by notice in relation to a particular specified infrastructure project make further provision—

- (a) conferring regulatory functions on the Authority;
- (b) applying provisions of Part 2 of the Act with or without modification;
- (c) similar to a provision of Part 2 of the Act;
- (d) conferring powers and imposing duties on a particular infrastructure provider (including any power or duty that is the same or similar to a power or duty conferred or imposed under or by virtue of the Act on relevant undertakers);
- (e) conferring powers and imposing duties on the Authority, the Secretary of State or any other body with public functions (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of the Act in respect of relevant undertakers);
- (f) relieving a relevant undertaker of specified duties to a specified extent;
- (g) providing, or enabling the provision of, limits (by reference to place, time or otherwise) on powers and duties conferred under sub-paragraph [(d)]; or
- (h) providing for the enforcement of powers, duties, conditions or limitations conferred, imposed or provided for under or by virtue of this regulation.

(5) The Secretary of State must—

- (a) subject to paragraph [(7)], before exercising the power under paragraph [(1)] or [(4)] consult—
 - (i) the person who the Secretary of State or the Authority proposes to designate or has designated (as the case may be) in relation to a specified infrastructure project;
 - (ii) the incumbent undertaker;
 - (iii) the Authority;
 - (iv) (where any part of the infrastructure in question is or is to be in Wales) the Welsh Ministers; and
 - (v) any other person the Secretary of State thinks appropriate;
- (b) include in any notice issued by the Secretary of State under paragraph [(1)] any conditions imposed under paragraph [(2)]; and

(a) S.I. 2008/409.

(c) publish and serve on the persons mentioned in sub-paragraph [(a)] any notice issued by the Secretary of State under paragraph [(1)] or [(4)].

(6) The Authority must—

- (a) subject to paragraph [(7)], before exercising the power under paragraph [(1)] consult—
 - (i) the person who the Authority or Secretary of State proposes to designate or has designated (as the case may be) in relation to the specified infrastructure project in question;
 - (ii) the incumbent undertaker;
 - (iii) the Secretary of State;
 - (iv) (where any part of the infrastructure in question is or is to be in Wales) the Welsh Ministers; and
 - (v) any other person the Authority thinks appropriate;
- (b) include in any notice issued by it under paragraph [(1)] any conditions imposed under paragraph [(2)]; and
- (c) publish and serve on the persons mentioned in sub-paragraph [(a)] any such notice.

(7) Paragraph [(5)(a)] and [(6)(a)] do not apply to the extent that the Secretary of State or the Authority respectively has consulted the persons specified in those paragraphs before these Regulations come into force.

(8) The Secretary of State may by notice vary or revoke a notice issued by the Secretary of State under paragraph [(1)] or [(4)].

(9) The Authority may by notice vary or revoke a notice issued by it under paragraph [(1)].

(10) Paragraph [(5)] and [(6)] apply to a notice issued under paragraph [(8)] or [(9)] as they apply to a notice issued under paragraph [(1)] or [(4)].

(11) For the purposes of paragraph [(1)], the Secretary of State or the Authority may regard an infrastructure project as having been put out to tender in accordance with these Regulations where any initial part of the tender process for the infrastructure project has been conducted in accordance with the provisions of these Regulations as laid in draft before Parliament, but before they came into force.

Provision of information by a relevant undertaker or infrastructure provider

9.—(1) A relevant undertaker or infrastructure provider must provide the Secretary of State with such information as the Secretary of State may by notice reasonably require for the purpose of carrying out the Secretary of State’s functions under these Regulations.

(2) Information required under paragraph [(1)] must be provided in such form and manner, at such time and place, and be accompanied or supplemented by such explanations as the Secretary of State may reasonably require.

(3) A relevant undertaker or infrastructure provider must not be required under this regulation to provide any information which would be protected from disclosure or production in proceedings in the High Court on grounds of legal professional privilege.

Enforcement

10. The duties under these Regulations of a relevant undertaker or infrastructure provider are enforceable under section 18 of the Act^(a) (as applied by these Regulations) by the Secretary of State or the Authority.

(a) Section 18 was amended by sections 49 and 101(1) of, and Schedule 8 to, the Water Act 2003.

Review

- 11.**—(1) Before the end of the review period, the Secretary of State must—
- (a) carry out a review of these Regulations;
 - (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by the scheme established by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.
- (3) “Review period” means the period of five years beginning with the day on which these Regulations come into force.

[Date]

[Name]
[Minister of State]
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Regulation 6

APPLICATION OF THE UTILITIES CONTRACTS REGULATIONS 2006

PART 1

<i>Provision applied</i>	<i>Modification</i>
regulation 2 (interpretation) and Schedules 2 (activities constituting works) and 4 (extension to non-member States).	These provisions apply only to the extent that they are relevant to the provisions below.
regulation 4 and Schedule 4 (extension to non-member States).	
regulation 12 (technical specifications in contract documents).	
regulation 13 (variants).	
regulation 14 (the open, restricted and negotiated procedures).	
regulation 16 (call for competition).	Paragraphs (2)(a)(i), (3) and (4) do not apply.
regulation 17 (award without call for competition).	Only paragraph (1)(i) applies.
regulation 18 (framework agreements).	
regulation 21 (central purchasing bodies).	
regulation 22 (time limits).	Paragraph (3) does not apply.
regulation 23 (general provisions in relation to qualification and selection of economic operators).	
regulation 24 (mutual recognition concerning administrative, technical or financial conditions).	
regulation 25 (qualification systems).	
regulation 26 (criteria for rejection of economic operators).	The incumbent undertaker is bound by paragraph (1) as if it were a contracting authority. Paragraph (3) does not apply.
regulation 27 (criteria for selection of economic operators).	
regulation 28 (consortia).	Paragraph (2) applies as if the reference to “a dynamic purchasing system” were omitted.
regulation 29 (corporations).	Paragraph (1) applies as if the reference “to be admitted to a dynamic purchasing system” were omitted.
regulation 29A (notification).	Paragraph (4) does not apply.
regulation 30 (criteria for the award of a contract).	Paragraph (9) applies as if the reference to “the Minister” were a reference to “the Secretary of State” and as if the words “for onward transmission to the Commission” were omitted.
regulation 33 (information about contract award procedures).	Paragraphs (6A) and (7) do not apply; paragraph (9) applies as if sub-paragraph (b)(ii) were omitted; paragraph (11) applies as if sub-paragraph (b) were omitted; and paragraph (15) applies as if the words after “expired” in paragraph (ii) were omitted.
regulation 33A (standstill period).	

regulation 35 (obligations relating to taxes, environmental protection, employment protection and working conditions).	
regulation 36 (conditions for performance of contracts).	
regulation 37 (preservation of records).	Paragraphs (1)(b) and (2) do not apply
regulation 40 (publication of notices).	Paragraphs (5) and (7) do not apply.
regulation 41 (confidentiality of information).	
regulation 42 (means of communication).	
regulation 43 (sub-contracting).	

PART 2

“Enforcement of obligations

45.—(1) The obligation on an incumbent undertaker to comply with the provisions of these Regulations other than—

- (a) regulation 30(9), and
- (b) any obligation excluded from the application of these Regulations by regulation 34,

is a duty owed to an economic operator.

(2) A breach of the duty owed in accordance with paragraph [(1)] is actionable by any economic operator which, in consequence suffers, or risks suffering, loss or damage and those proceedings shall be in the High Court.

(3) Subject to paragraphs [(4)] to [(6)], such proceedings must be started within 30 days beginning with the date when the economic operator first knew or ought to have known that grounds for starting proceedings had arisen.

(4) Paragraph (3) does not require proceedings to be started before the end of any of the following periods—

- (a) where the proceedings relate to a decision which is sent to the economic operator by facsimile or electronic means, 10 days beginning with—
 - (i) the day after the date on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision; or
 - (ii) if the decision is not so accompanied, the day after the date on which the economic operator is informed of a summary of those reasons;
- (b) where the proceedings relate to a decision which is sent to the economic operator by other means, whichever of the following periods ends first—
 - (i) 15 days beginning with the day after the day on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision; or
 - (ii) 10 days beginning with—
 - (aa) the day after the date on which the decision is received, if the decision is accompanied by a summary of the reasons for the decision; or
 - (bb) if the decision is not so accompanied, the day after the date on which the economic operator is informed of a summary of those reasons; and
- (c) where sub-paragraphs (a) and (b) do not apply but the decision is published, 10 days beginning with the day on which the decision is published.

(5) Subject to paragraph [(6)], the Court may extend the time limit imposed by paragraph [(3)] where the Court considers that there is good reason for doing so.

(6) The Court must not exercise its power under paragraph [(5)] so as to permit proceedings to be started more than 3 months after the date when the economic operator first knew or ought to have known that grounds for starting the proceedings had arisen.

(7) For the purposes of this regulation, proceedings are to be regarded as started when the claim form is issued.

(8) Subject to paragraph [(9)], but otherwise without prejudice to any other powers of the Court in proceedings brought under this regulation, the Court may—

- (a) by interim order suspend the procedure leading to the award of the contract or the procedure leading to the determination of a design contest in relation to the award of a contract of which the breach of duty owed in accordance with paragraph [(1)] is alleged, or suspend the implementation of any decision or action taken by the incumbent undertaker in the course of following such a procedure; and
- (b) if satisfied that a decision or action taken by an incumbent undertaker was a breach of the duty owed in accordance with paragraph (1)—
 - (i) order the setting aside of that decision or action or order the incumbent undertaker to amend any document;
 - (ii) award damages to an economic operator which has suffered loss or damage as a consequence of the breach; or
 - (iii) do both of these things.

(9) In proceedings under this regulation the Court does not have power to order any remedy other than an award of damages in respect of a breach of the duty owed in accordance with paragraph [(1)] if the contract in relation to which the breach occurred has been entered into.

(10) Where, in proceedings under this regulation, the Court is satisfied that an economic operator would have had a real chance of being awarded a contract or winning a design contest if that chance had not been adversely affected by a breach of the duty owed to it by the incumbent undertaker in accordance with paragraph [(1)], the economic operator shall be entitled to damages amounting to its costs in preparing its tender and in participating in the procedure leading to the award of the contract or its costs of participating in the procedure leading to the determination of the design contest.

(11) Paragraph [(10)] does not affect a claim by an economic operator that it has suffered other loss or damage or that it is entitled to relief other than damages and is without prejudice to the matters on which an economic operator may be required to satisfy the Court in respect of any other such claim.

(12) Subject to paragraphs [(13)] and [(14)], where—

- (a) a claim form is issued in respect of an incumbent undertaker's decision to award the contract,
- (b) the incumbent undertaker has become aware that the claim form has been issued and that it relates to that contract, and
- (c) the contract has not been entered into,

the incumbent undertaker is required to refrain from entering into the contract.

(13) The requirement continues until any of the following occurs—

- (a) the Court brings the requirement to an end by interim order; or
- (b) the proceedings at first instance are determined, discontinued or otherwise disposed of and no order has been made continuing the requirement (for example in connection with an appeal or the possibility of an appeal).

(14) This regulation does not affect the obligations imposed by regulation 33A.”

APPLICATION OF THE ACT

Purposes of the Schedule

1. Subject to the modifications set out below, the following provisions of the Act apply for the purposes of the licensing and regulation of infrastructure providers.

Appointment of relevant undertakers

2. Section 6(a) (appointment of relevant undertakers) applies as if, at the end of subsection (5A) (prohibition on relevant undertaker being a licensed water supplier), there were inserted “or an infrastructure provider”.

Licensing of infrastructure providers

3. Chapter 1A of Part 2(b) (licensing of water suppliers) applies as if—

- (a) at the end of the heading, there were inserted “and infrastructure providers”; and
- (b) after section 17B (licensing of water suppliers: supplementary), there were inserted—

“Licensing of infrastructure providers

[17BA].—(1) An infrastructure provider may be granted a licence to undertake an infrastructure project specified by the Secretary of State or the Authority under regulation [4(1)] of the Regulations (“the project licence”).

(2) A project licence may be granted by the Authority.

(3) Before granting a licence under subsection (1), the Authority must consult—

- (a) the incumbent undertaker;
- (b) the Secretary of State;
- (c) the relevant quality regulator; and
- (d) any other person the Authority thinks is appropriate.

(4) A project licence must not be granted to an infrastructure provider unless—

- (a) it is a limited company; and
- (b) it is not a relevant undertaker.

(5) The project licence must—

- (a) be in writing;
- (b) be published by the Authority; and
- (c) unless revoked or suspended in accordance with any condition contained in it, continue in force for such period as may be specified in or determined under the licence.

(6) References in this Act to a project licence are to a licence granted under subsection (1).

(7) In this Chapter “the relevant quality regulator” means—

- (a) where a project licence relates to the provision of a system of water supply or the securing of supplies of water, the Chief Inspector of Drinking Water; and

(a) Section 6 was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003.

(b) Chapter 1A of Part 2 was inserted by section 56 of, and Schedule 4 to, the Water Act 2003.

- (b) where a project licence relates to the provision of a system of sewers or the provision of means for emptying, or dealing effectually with the contents of, sewers—
 - (i) in England, the Environment Agency; and
 - (ii) in Wales, the body established by the Natural Resources Body for Wales (Establishment) Order 2012(a).
- (8) In this section—
 - (a) “the Regulations” means the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013; and
 - (b) “the incumbent undertaker” means the relevant undertaker whose ability to provide services for its customers, but for the exercise of the powers of the Secretary of State or the Authority under or by virtue of these Regulations in relation to a particular infrastructure project, would be threatened by that infrastructure project. ”.

Conditions of project licences

4. Chapter 1A of Part 2 applies as if, after section 17H (standard conditions of water supply licences), there were inserted—

“Conditions of project licences

[17HA].—(1) A project licence may include—

- (a) such conditions as appear to the Authority to be requisite or expedient having regard to the duties imposed on it by Part 1 of this Act; and
- (b) conditions requiring the rendering to the Secretary of State of a payment on the grant of the project licence, or payments whilst the licence is in force, or both, of such amount or amounts as may be determined under the conditions.

(2) Conditions included in a project licence may—

- (a) require the holder of the licence to comply with any direction given by a specified relevant person as to specified matters or matters which are of a specified description;
- (b) require the holder of the licence to do or not do specified things or things which are of a specified description, except in so far as a specified relevant person consents to the holder’s not doing or doing them; and
- (c) provide for the reference to and determination by a specified relevant person of specified questions, or questions which are of a specified description, which arise under or in connection with the licence.

(3) For the purposes of subsection [(2)]—

- (a) the following are relevant persons—
 - (i) the Secretary of State;
 - (ii) the Authority; and
 - (iii) and of the relevant quality regulators.
- (b) “specified” means specified in the licence in question.

(4) Conditions included in a project licence may contain provision for the conditions to have effect, cease to have effect or be modified at such times, and in such matter and in such circumstances as may be specified in or determined in accordance with the conditions.

(a) S.I. 2012/1903 (W. 230).

(5) Any such condition as is referred to in subsection [(4)] must have effect in addition to the provision made by this Chapter with respect to the modification of the conditions of a project licence.”

Modification of project licences

5.—(1) Chapter 1A of Part 2 applies as if, after section 17I (modification of water supply licences by agreement), there were inserted—

“Modification of project licences by agreement

[17IA].—(1) Subject to the following provisions of this section, the Authority may modify the conditions of a project licence.

(2) The Authority may not make any modifications under this section unless the licence holder has consented to the modifications.

(3) Before making modifications under this section, the Authority must give notice—

- (a) stating that it proposes to make the modifications and setting out their effect,
- (b) stating the reasons why it proposes to make the modifications, and
- (c) specifying the period (not being less than twenty-eight days from the date of the publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and must consider any representations or objections which are duly made and not withdrawn.

(4) A notice under subsection [(3)] must be given—

- (a) by publishing the notice in such manner as 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 modifications; and
- (b) by serving a copy of the notice on—
 - (i) the licence holder;
 - (ii) the Secretary of State; and
 - (iii) the relevant quality regulator.

(5) If, within the period specified in the notice under subsection [(3)], the Secretary of State directs the Authority not to make the modification, the Authority must comply with the direction.”.

(2) Section 17K (water supply licences: modification references to the CMA) applies as if—

- (a) in the title, after “water supply licences”, there were inserted “and project licences”;
- (b) in subsection (1) (reference of a particular licence), in paragraph (a)(i), after “a particular licence” there were inserted “granted under this Chapter”; and
- (c) in subsection (5)(b) (persons to be served with copy of reference or variation)—
 - (i) after sub-paragraph (iii), there were inserted—
 - “(iiia) in a case relating to a project licence, the relevant quality regulator;”;
 - (ii) at the beginning of each of sub-paragraphs (ii), (iv) and (v), there were inserted “in a case relating to water supply licences;”.

(3) Sections 17L (references under section 17K: time limits) and 17M (references under section 17K: powers of investigation) apply without modification.

(4) Section 17N (water supply licences: reports on modification references) applies as if—

- (a) in the title, after “water supply licences”, there were inserted “and project licences”;
- (b) in subsection (10)(a) (persons to be served with report relating to a particular licence)—
 - (i) after sub-paragraph (ii), there were inserted—

- “(iia) if the report relates to a project licence, the relevant quality regulator;” and
 - (ii) at the beginning of each of sub-paragraphs (ii) and (iv), there were inserted “if the report relates to a water supply licence;” and
 - (c) in subsection (12) (meaning of “relevant time”), in paragraph (a), after “Secretary of State and” there were inserted “, if the report relates to a water supply licence.”
- (5) Section 17O (water supply licences: modification following report) applies as if—
- (a) in the title, after “water supply licences”, there were inserted “and project licences”;
 - (b) in subsection (5)(c) (persons to be served with copy of notice of Authority’s proposed modifications)—
 - (i) after sub-paragraph (ii), there were inserted—
 - “(iia) if the report relates to a project licence, the relevant quality regulator;” and
 - (ii) at the beginning of each of sub-paragraphs (i), (iii) and (iv), there were inserted “if the report relates to a water supply licence;” and
 - (c) in subsection (9) (effect of modifications on standard licence conditions), after “particular” there were inserted “water supply”.
- (6) Section 17P (water supply licences: CMA’s power of veto following report) applies as if—
- (a) in the title, after “water supply licences”, there were inserted “and project licences”; and
 - (b) in subsection (7)(b) (persons to be served with copy of notice of CMA’s proposed modifications)—
 - (i) after sub-paragraph (iv), there were inserted—
 - “(iva) if the report relates to a project licence, the relevant quality regulator;” and
 - (ii) at the beginning of each of sub-paragraphs (iii), (v) and (vi), there were inserted “if the report relates to a water supply licence.”
- (7) Section 17Q (section 17P: supplementary) applies without modification.
- (8) Section 17R (water supply licences: modification by order under the Enterprise Act 2002) applies as if—
- (a) in the title, after “water supply licences”, there were inserted “and project licences”; and
 - (b) in each of subsections (1)(a), (2)(a)(i), (2)(a)(ii) and (2)(b), for “or combined licence” there were substituted “, combined licence or project licence”.

Enforcement

6.—(1) Section 18 (orders for securing compliance with certain provisions) applies as if, in subsection (1A)(b) (power to make final enforcement order where licensed water supplier is causing or contributing to contravention by relevant undertaker), at the end of sub-paragraph (i), there were inserted “or a company holding a different licence under Chapter 1A of this Part”.

(2) Sections 19(a) (exceptions to the duty to enforce), 20(b) (procedure for enforcement orders), 21 (validity of enforcement orders) and 22(c) (effect of enforcement order) apply without modification.

(3) Section 22A(d) (penalties) applies as if—

- (a) in subsection (1)(a) (power to impose financial penalties on those licensed under Chapter 1A of Part 2 in relation to contraventions of appointment or licence conditions), at the end of sub-paragraph (ii), there were inserted “or by a company holding a different licence under Chapter 1A of this Part of any condition of that licence”; and

(a) Section 19 was amended by section 54 of, and Schedule 10 to, the Competition Act 1998 (c. 41), section 101(1) of, and Schedule 8 to, the Water Act 2003, S.I. 2000/1297 and S.I. 2010/996.

(b) Section 20 was amended by sections 49 and 101(1) of, and Schedule 8 to, the Water Act 2003.

(c) Section 22 was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003.

(d) Sections 22A to 22F were inserted by section 48 of the Water Act 2003.

- (b) in subsection (2)(a) (power to impose financial penalties on those licensed under Chapter 1A of Part 2 in relation to contraventions of enforceable statutory or other requirements), in sub-paragraph (ii), after “Part” there were inserted “or by a company holding a different licence under Chapter 1A of this Part,”.

(4) Sections 22B (statement of policy with respect to penalties), 22C (time limits on financial penalties), 22D (interest and payments of instalments), 22E (appeals) and 22F (recovery of penalties) apply without modification.

Duties imposed on the Authority in relation to the protection of customers

7. Section 27(a) (general duty of the Authority to keep matters under review) applies as if—
- (a) in subsection (1) (duty to keep matters under review), in paragraph (b), after “licensed water suppliers” there were inserted “and infrastructure providers”; and
 - (b) in subsection (4) (duty to give advice and assistance to the Secretary of State and the CMA), in paragraph (c), at the end there were inserted “or project licences”.

Duties imposed on infrastructure providers in relation to the protection of consumers

8. Section 35A(b) (remuneration and standards of performance), applies as if, in subsection (1), at the end, there were inserted “or designated as an infrastructure provider under regulation [8(1)] of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013”.

Duties imposed on the Secretary of State and the Authority in relation to information

9.—(1) Section 195(c) (the Authority’s register) applies as if, in subsection (2) (documents to be entered in the register), after paragraph (bc), there were inserted—

“(bd) every notice issued by the Secretary of State or the Authority under the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (other than a notice issued under regulation [9]);”.

(2) Section 195A(d) (reasons for decisions) applies as if, in subsection (1) (decisions for which reasons must be published), after paragraph (f), there were inserted—

“(fa) the giving of any notice under the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013;”.

Powers conferred on the Secretary of State and the Authority in relation to information

10.—(1) Section 201(e) (publication of certain information and advice) applies without modification.

(2) Section 202(f) (duties of undertakers and licensed water suppliers to furnish the Secretary of State with information) applies as if—

- (a) in the title, for “undertakers” there were substituted “companies”; and
- (b) in subsection (5) (enforcement under section 18 of the Act), for “or licensed water supplier” there were substituted “, licensed water supplier or infrastructure provider”.

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- (a) Section 27 was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003 and section 278 of, and Schedule 25 to, the Enterprise Act 2002 (c. 40).
 - (b) Section 35A was inserted by section 50 of the Water Act 2003.
 - (c) Section 195 was amended by section 15 of, and Schedule 3 to, the Water Industry Act 1999 and sections 48 and 101(1) of, and Schedule 8 to, the Water Act 2003.
 - (d) Section 195A was inserted by section 51 of the Water Act 2003.
 - (e) Section 201 was amended by section 278 of, and Schedule 25 to, the Enterprise Act 2002 and section 101(1) of, and Schedule 8 to, the Water Act 2003.
 - (f) Section 202 was amended by section 120 of, and Schedule 22 to, the Environment Act 1995 and section 101(1) of, and Schedule 8 to, the Water Act 2003.

(3) Section 203(a) of the Act (power to acquire information for enforcement purposes) applies as if—

- (a) in subsection (1)(b) (power to acquire information from companies licensed under Chapter 1A of Part 2 of the Act), in sub-paragraph (ii) after “condition of the appointment” there were inserted “or licence condition of a company holding a different licence under that Chapter”; and
- (b) subsections (4) and (5) (offences) were omitted.

Powers of direction conferred on the Secretary of State in relation to national security and civil emergencies

11. Section 208(b) (directions in the interests of national security) applies as if—

- (a) in subsection (1) (general power of direction)—
 - (i) for “or licensed water supplier” there were substituted “, licensed water supplier or infrastructure provider”; and
 - (ii) for “or supplier” there were substituted “, supplier or provider”;
- (b) in subsection (2) (power of direction in particular cases)—
 - (i) for “or licensed water supplier” there were substituted “, licensed water supplier or infrastructure provider”; and
 - (ii) for “or supplier” there were substituted “, supplier or provider”; and
- (c) in subsection (3) (duty of relevant undertakers and licensed water suppliers to comply with a direction), each time it appears, for “or licensed water supplier” there were substituted “, licensed water supplier or infrastructure provider”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Part 2A of the Water Industry Act 1991 (“the Act”) in relation to water and sewerage undertakers whose appointment areas are wholly or mainly in England.

Regulation [1(2) and (3)] provides for provisions in these Regulations to cease to have effect seven years after they come into force in specified circumstances.

Regulation [3] applies (with modification) the general duty on the Secretary of State and the Water Services Regulation Authority (“Ofwat”) with respect to the water industry for the purposes of their functions exercised under or by virtue of these Regulations.

Regulation [4] gives the Secretary of State and Ofwat powers to specify by notice in writing an infrastructure project in certain circumstances. Ofwat must publish guidance to be followed by it in determining whether to specify an infrastructure project. An infrastructure project is a project which an incumbent water or sewerage undertaker must ordinarily undertake to fulfil its statutory duties under section 37 (general duty to maintain water supply system etc.) or 94 (general duty to provide sewerage system) of the Act. Once specified, the incumbent undertaker is prohibited under regulation [5] from undertaking that infrastructure project, although the Secretary of State or Ofwat may permit or require it to undertake such preparatory work as they may prescribe by notice in writing. The Secretary of State and Ofwat may vary or revoke notices issued by them under regulations [4] or [5]. The power to issue notices is subject to certain procedural requirements and transitional provisions.

Regulation [6] requires the water or sewerage undertaker to put a specified infrastructure project out to tender. The ordinary procurement rules may apply to such a tender. Where those rules do

(a) Section 203 was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003.

(b) Section 208 was amended by section 101(1) of, and Schedules 7 and 8 to, the Water Act 2003.

not apply or in certain other circumstances, these Regulations apply (with modifications) certain provisions of the Utilities Contracts Regulations 2006 (S.I. 2006/6) for that tender process. Those provisions are set out in Schedule [1] to these Regulations.

Regulation [7] limits companies associated with the water or sewerage undertaker from bidding in the tender process except where agreed by the Secretary of State or Ofwat by notice in writing. The Secretary of State and Ofwat may vary or revoke any notice issued by them under regulation [7]. The power to issues notices is subject to certain procedural requirements and transitional provisions.

Regulation [8] gives the Secretary of State and Ofwat power to designate by notice in writing a person wholly or partly responsible for a specified infrastructure project which has been put out to tender in accordance with these Regulations. The “infrastructure provider” may then be licensed and regulated as set out in Schedule [2]. Regulation [8] also gives the Secretary of State power to make further regulation by notice in writing in relation to particular specified infrastructure projects. The Secretary of State and Ofwat may vary or revoke any notice issued by them under regulation [8]. The power to issues notices is subject to certain procedural requirements and transitional provisions.

Regulation [9] requires water and sewerage undertakers and infrastructure providers to provide the Secretary of State with such information as may be reasonably required for the purposes of carrying out their functions under these Regulations.

Regulation [10] provides for civil enforcement of these Regulations under the Act.

Regulation [11] requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after the Regulations come into force. Following the review it will fall to the Secretary of State to consider whether the Regulations should be allowed to expire as regulation [1(2) and (3)] provides, be revoked early, or continue in force with or without amendment. A further instrument would be needed to continue the Regulations in force with or without amendments or to revoke them early.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the [Thames Tideway Tunnel] Team, Area 2C, Department for Environment, Food and Rural Affairs, Ergon House, c/o Nobel House, 17 Smith Square, London SW1P 3JR. It is published on www.legislation.gov.uk alongside the Explanatory Memorandum and this instrument.