

## SCHEDULE 1 **E+W**

Regulation 3

### APPLICATION OF THE ACT AND RELATED PROVISIONS

#### **Purposes of the Schedule** **E+W**

- 1.—(1) The provisions of—
- (a) the Act mentioned in paragraphs 2, 3(1) and (3), 5(2) to (8) and 6 to 16,
  - (b) the Enterprise Act 2002 <sup>M1</sup> mentioned in paragraph 7(1), and
  - (c) the Water Industry (Special Administration) Rules 2009 <sup>M2</sup> mentioned in paragraph 7(7),
- apply for the purposes of the regulation of specified infrastructure projects, with the modifications (if any) specified in those paragraphs.
- (2) The provisions having effect under paragraphs 3(2), 4 and 5(1) as if inserted into the Act apply for the purposes mentioned in sub-paragraph (1).
- (3) In this Schedule, references to sections are to sections in the Act, unless otherwise stated.

#### **Marginal Citations**

- M1** 2002 c. 40.  
**M2** S.I. 2009/2477.

#### **Appointment of relevant undertakers and transitional provisions with respect to replacement project licences** **E+W**

2. Section 6 <sup>M3</sup> (appointment of relevant undertakers) applies as if, in subsection (5A) (prohibition on relevant undertaker being a licensed water supplier), after “supplier”, there were inserted “ or a licensed infrastructure provider ”.

#### **Marginal Citations**

- M3** Section 6 was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003.

#### **Licensing of infrastructure providers** **E+W**

- 3.—(1) The Chapter heading preceding section 17A <sup>M4</sup> (licensing of water suppliers) applies as if, at the end, there were inserted “and licensed infrastructure providers”.
- (2) The following has effect as if it were inserted after section 17F (procedure for granting water supply licences)—

##### **“17FA Licensing of infrastructure providers**

- (1) The Authority may grant to a company a licence (“a project licence”) in connection with the undertaking of a particular infrastructure project specified under regulation 4(1) of the Regulations.
- (2) Before granting a project licence, the Authority must consult—
- (a) the incumbent undertaker;
  - (b) the Secretary of State;
  - (c) the relevant quality regulator; and

*Status: Point in time view as at 28/06/2013.*

*Changes to legislation: There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)*

- (d) any other person the Authority thinks is appropriate.
- (3) A project licence must not be granted to a company unless—
  - (a) the company has been designated under regulation 8(1) of the Regulations as the infrastructure provider for the infrastructure project to which the licence relates; and
  - (b) the company is not a relevant undertaker.
- (4) A project licence must—
  - (a) be in writing; and
  - (b) 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.
- (5) References in this Act to a project licence are to a licence granted under subsection (1).
- (6) 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
  - (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 Natural Resources Body for Wales <sup>M5</sup>.

#### **17FB Transitional provision with respect to replacement project licences**

(1) Schedule 2 to this Act shall have effect for enabling provision to be made with respect to cases in which it is proposed that a company be granted a project licence under this Chapter in order that it may replace another company in carrying on functions formerly carried on by that company.

(2) Subsections (3) and (4) below apply where one company (“the new licensee”) has been granted a project licence so that it may replace another company in carrying on functions that that company formerly carried on in its capacity as a licensed infrastructure provider, but the project licence has yet to come into force.

(3) The following provisions of this Act shall apply in relation to the new licensee as if the project licence had come into force—

- (a) sections 18 to 24 and Schedule 3;
- (b) sections 158, 159 and 161;
- (c) sections 179 and 180 and Schedule 12;
- (d) sections 181 to 183 and Schedule 13; and
- (e) sections 186, 187, 190, 192, 199, 200, 202, 203 and 208.

(4) Such of the conditions to be imposed on the new licensee under section 17HA below as the Authority may specify in a written notice given by it to the new licensee shall have effect, in relation to the operation of any provision mentioned in subsection (3) above before the project licence comes into force, as if the project licence had come into force.”

- (3) Schedule 2 <sup>M6</sup> (transitional provision on termination of appointments) applies as if—
  - (a) in the title, after “appointments”, there were inserted “ and licences ”; and
  - (b) in paragraph 1 (cases where Schedule applies)—
    - (i) in sub-paragraph (1), for “(3A)”, there were substituted “ (3B) ”;

- (ii) in sub-paragraph (3A)—
  - (aa) in paragraph (a), after “qualifying licensed water supplier”, there were inserted “ or a licensed infrastructure provider ”; and
  - (bb) for paragraph (b), there were substituted—
    - “(b) it is proposed that on and after the relevant date another company (“the transferee”) should carry on—
      - (i) where the transferor is a qualifying licensed water supplier, activities relating to the introduction or introductions of water mentioned in section 23(6)(b) of this Act which were carried on by the transferor until that date, or
      - (ii) where the transferor is a licensed infrastructure provider, functions formerly carried on by the transferor in its capacity as a licensed infrastructure provider.”;
- (iii) after sub-paragraph (3A), there were inserted—

“(3B) The fourth case in which this Schedule applies is where the Authority is proposing to grant a project licence to a company (“the transferee”) to carry on activities relating to functions formerly carried on by another company (“the transferor”) in its capacity as a licensed infrastructure provider.”; and
- (iv) in sub-paragraph (4)—
  - (aa) in the definition of “other relevant companies”, for “water undertakers”, there were substituted “ relevant undertakers ”, and after “section 23(6)(b) of this Act” there were inserted “ or, as the case may be, the functions to which its project licence relates ”;
  - (bb) in the definition of “the relevant date”, after paragraph (b), there were inserted—
    - “(c) where this Schedule applies by virtue of sub-paragraph (3B) above, the coming into force of the project licence mentioned in that sub-paragraph; and”;
  - (cc) in the definition of “transferor” and “transferee”, after “sub-paragraph (3A) above”, there were inserted “ or (3B) above (as the case may be) ”;
- (c) in paragraph 2 (making and modification of transfer schemes)—
  - (i) in sub-paragraph (7A)—
    - (aa) after “paragraph 1(3A)”, there were inserted “ or (3B) ”; and
    - (bb) in paragraph (b), after “in consequence of its licence”, there were inserted “ or, in relation to a company which is a licensed infrastructure provider, a reference to activities regulated by its licence and any statutory functions conferred or imposed on it in consequence of its licence ”; and
  - (ii) for sub-paragraph (8) (offence), there were substituted—

“(8) The duties of companies under sub-paragraph (7) above are enforceable under section 18 above by the Secretary of State or the Authority.”;
- (d) in paragraph 3 (transfers by scheme)—
  - (i) in sub-paragraph (4)(d), after “enactments” there were inserted “ (including any designation made under regulation 8(1) of the Regulations) ”;
  - (ii) in sub-paragraph (7), after “paragraph 1(3A)”, there were inserted “ or (3B) ”;
- (e) paragraph 4A (exclusion of transfer of licence) were repealed;

**Status:** Point in time view as at 28/06/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)

- (f) in paragraph 5 (supplemental provisions of schemes), in sub-paragraph (3) after “paragraph 1(3A)”, there were inserted “ or (3B) ”;
- (g) in paragraph 6 (duties of existing appointee after the scheme comes into force), in sub-paragraph (9), after “paragraph 1(3A)”, there were inserted “ or (3B) ”; and
- (h) paragraph 7 (power to make an order for further transitional provision and local statutory provisions) were repealed.

#### Marginal Citations

- M4** Section 17A and the other provisions in Chapter 1A of Part 2 were inserted by section 56 of, and Schedule 4 to, the Water Act 2003.
- M5** Established under article 3 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903 (W. 230)).
- M6** Schedule 2 was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003. Schedule 2 was also amended by section 34 of, and Schedule 5 to, the Flood and Water Management Act 2010, although those provisions are not yet in force.

#### Conditions of project licences **E+W**

4. The following has effect as if it were inserted after section 17H (standard conditions of water supply licences)—

##### “17HA Conditions of project licences

- (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 while 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) 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 manner and in such circumstances, as may be specified in or determined in accordance with the conditions.

(5) Any such condition as is referred to in subsection (4) has 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** **E+W**

5.—(1) The following has effect as if it were inserted after section 17I (modification of water supply licences by agreement)—

### **“17IA Modification of project licences by agreement**

(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 Competition Commission) 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) at the beginning of each of sub-paragraphs (ii), (iv) and (v), there were inserted “in a case relating to one or more water supply licences,”; and
  - (ii) after sub-paragraph (iii), there were inserted—
    - “(iia) in a case relating to a project licence, the incumbent undertaker;

**Status:** Point in time view as at 28/06/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)

- (iiib) in a case relating to a project licence, the relevant quality regulator;”.
- (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) at the beginning of each of sub-paragraphs (ii) and (iv), there were inserted “if the report relates to a water supply licence;”; and
    - (ii) after sub-paragraph (ii), there were inserted—
      - “(iia) if the report relates to a project licence, the incumbent undertaker;
      - (iib) if the report relates to a project licence, the relevant quality regulator;”; and
  - (c) in subsection (12) (meaning of “relevant time”)—
    - (i) in paragraph (a), after “Secretary of State”, there were inserted “ or, in the case of a report relating to one or more water supply licences, the Secretary of State ”; and
    - (ii) in paragraph (b), after “copies”, there were inserted “ of a report relating to one or more water supply licences ”.
- (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 ”; and
  - (b) in subsection (5)(c) (persons to be served with copy of notice of Authority's proposed modifications)—
    - (i) at the beginning of each of sub-paragraphs (i), (iii) and (iv), there were inserted “if the notice relates to one or more water supply licences;”; and
    - (ii) after sub-paragraph (ii), there were inserted—
      - “(iia) if the notice relates to a project licence, the incumbent undertaker;
      - (iib) if the notice relates to a project licence, the relevant quality regulator;”.
- (6) Section 17P (water supply licences: Commission'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 Commission's proposed modifications)—
    - (i) at the beginning of each of sub-paragraphs (iii), (v) and (vi), there were inserted “if the notice relates to one or more water supply licences;”; and
    - (ii) after sub-paragraph (iv), there were inserted—
      - “(iva) if the notice relates to a project licence, the incumbent undertaker;
      - (ivb) if the notice relates to a project licence, the relevant quality regulator;”.
- (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 subsections (1)(a) and (2)(a)(i) and (ii) and (b), for “or combined licence”, in each place it occurs, there were substituted “ , combined licence or project licence ”.

## Enforcement **E+W**

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), in sub-paragraph (i), after “this Part”, there were inserted “ or another company holding a licence under Chapter 1A of this Part ”.

(2) Sections 19 <sup>M7</sup> (exceptions to the duty to enforce), 20 <sup>M8</sup> (procedure for enforcement orders), 21 (validity of enforcement orders) and 22 <sup>M9</sup> (effect of enforcement order) apply without modification.

(3) Section 22A <sup>M10</sup> (penalties) applies as if—

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

### Marginal Citations

**M7** Section 19 was amended by section 54 of, and Schedule 10 to, the Competition Act 1998, section 101(1) of, and Schedule 8 to, the Water Act 2003, S.I. 2000/1297 and 2010/996.

**M8** Section 20 was amended by sections 49 and 101(1) of, and Schedule 8 to, the Water Act 2003.

**M9** Section 22 was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003.

**M10** Sections 22A to 22F were inserted by section 48 of the Water Act 2003.

## Special administration **E+W**

7.—(1) Section 249 <sup>M11</sup> (special administration regimes) of the Enterprise Act 2002 applies as if—

- (a) in subsection (1) (saving in relation to the replacement of Part 2 of the Insolvency Act 1986), after paragraph (aa) (saving for qualifying licensed water supplier), there were inserted—

“(ab) a licensed infrastructure provider within the meaning of the Water Industry Act 1991,”; and

- (b) subsections (3) to (5) were repealed.

(2) Section 23 <sup>M12</sup> (meaning and effect of special administration order) applies as if—

- (a) in subsection (1) (meaning of special administration order), after “qualifying licensed water supplier”, there were inserted “ or a licensed infrastructure provider ”;
- (b) after subsection (2A) (purposes of a special administration order for qualifying licensed water suppliers), there were inserted—

“(2AA) The purposes of a special administration order made in relation to any company which is a licensed infrastructure provider shall be—

**Status:** Point in time view as at 28/06/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)

- (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 ensure that its functions may be properly carried out; and
  - (b) the carrying out of those functions pending the making of the transfer.”; and
- (c) in subsection (4) (application of Schedule 2 to the Act)—
  - (i) at the end of paragraph (a), “or” were repealed; and
  - (ii) after paragraph (a), there were inserted—
    - “(aa) a company carries on activities relating to the functions formerly carried on by a licensed infrastructure provider; or”.
- (3) Section 24 <sup>M13</sup> (special administration orders made on special petitions) applies as if—
  - (a) in subsection (1) (applications for special administration orders made in relation to relevant undertakers), after “this Part”, there were inserted “ or is a licensed infrastructure provider ”;
  - (b) in subsection (2) (grounds for making applications for special administration orders)—
    - (i) in paragraph (bb) (qualifying licensed water supplier causing contravention of a principal duty of a water undertaker)—
      - (aa) in the words preceding sub-paragraph (i), after “qualifying licensed water supplier”, there were inserted “ or a licensed infrastructure provider ”; and
      - (bb) in sub-paragraph (i), for “water undertaker”, there were substituted “ relevant undertaker ”; and
    - (ii) in paragraph (d) (petition by the Secretary of State following company inspector's report), after “qualifying licensed water supplier”, there were inserted “ or a licensed infrastructure provider ”; and
  - (c) in subsection (7) (meaning of principal duty), in paragraph (b), after “qualifying licensed water supplier”, there were inserted “ or a licensed infrastructure provider ”.
- (4) Schedule 3 <sup>M14</sup> (special administration orders) applies without modification.
- (5) Section 25 <sup>M15</sup> (power to make special administration order on winding-up petition) applies as if, after “qualifying licensed water supplier”, in each place it occurs, there were inserted “ or a licensed infrastructure provider ”.
- (6) Section 26 <sup>M16</sup> (restrictions on voluntary winding-up and insolvency proceedings) applies as if, after “qualifying licensed water supplier” there were inserted “ or a licensed infrastructure provider ”.
- (7) The provisions of the Water Industry (Special Administration) Rules 2009 apply as if—
  - (a) in rule 3 (definitions and interpretation), in paragraph (1)—
    - (i) following definition were inserted at the appropriate place—
      - ““infrastructure” in relation to a licensed infrastructure provider (within the meaning of the Water Industry Act 1991) has the meaning given in the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013;” and
    - (ii) in the definition of “water company” after “qualifying licensed water supplier”, there were inserted “ or a licensed infrastructure provider ”;
  - (b) in rule 8 (contents of affidavit), in paragraph (1)(a), after “qualifying licensed water supplier”, there were inserted “ or a licensed infrastructure provider ”;
  - (c) in rule 11 (service of petition), in paragraph (2) (persons who must be served)—



- (i) in sub-paragraph (j) after “the Welsh Ministers” there were inserted “ (where any part of the infrastructure in question is or is to be in Wales), ”;
- (ii) sub-paragraph (k) were omitted; and
- (iii) in sub-paragraph (l), after “the Welsh Ministers” there were inserted “ (where any part of the infrastructure in question is or is to be in Wales) ”;
- (d) in rule 17 (notice and advertisement of special administration order), in paragraph (4), “, the Welsh Ministers” were omitted;
- (e) in rule 18 (notice of discharge of special administration order), after “the Welsh Ministers” there were inserted “ (where any part of the infrastructure in question is or is to be in Wales) ”;
- (f) in rule 23 (resignation of special administrator), in paragraph (3)(a), “or the Welsh Ministers, as appropriate” were omitted;
- (g) in rule 24 (special administrator's death in office), in paragraph (2)(a), “or the Welsh Ministers, as appropriate” were omitted;
- (h) in rule 25 (order filling vacancy), in sub-paragraph (c), “or the Welsh Ministers, as appropriate” were omitted;
- (i) in rule 35 (statement if special administration order to be discharged before statement of proposals), “, the Welsh Ministers” were omitted;
- (j) in rule 65 (right of inspection of proxies), in paragraph (1)(e), after “the Welsh Ministers” there were inserted “ (where any part of the infrastructure in question is or is to be in Wales) ”; and
- (k) in rule 82 (certain persons' right to inspect the court file), in paragraph (1)(d) after “the Welsh Ministers” there were inserted “ (where any part of the infrastructure in question is or is to be in Wales) ”.

#### **Marginal Citations**

- M11** Section 249 was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003.
- M12** Section 23 was amended by was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003. Section 23 was also amended by section 34 of, and Schedule 5 to, the Flood and Water Management Act 2010, although the provisions are only in force for limited purposes.
- M13** Section 24 was amended by was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003. Section 24 was also amended by section 34 of, and Schedule 5 to, the Flood and Water Management Act 2010, although the provisions are not yet in force.
- M14** Schedule 3 was amended by was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003 and by S.I. 2009/1941. Schedule 3 was repealed by section 34 of, and Schedule 5 to, the Flood and Water Management Act 2010, although the provisions are not yet in force.
- M15** Section 25 was amended by was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003.
- M16** Section 26 was amended by was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003.

#### **Duties imposed on the Authority in relation to the protection of customers** **E+W**

- 8. Section 27 <sup>M17</sup> (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)—
    - (i) after “licensed water suppliers”, there were inserted “ or licensed infrastructure providers ”; and
    - (ii) after “authorised”, there were inserted “ or regulated ”;

**Status:** Point in time view as at 28/06/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)

- (b) in subsection (2) (duty of the Authority to collect information), in paragraph (aa), after “authorised”, there were inserted “ or regulated ”; and
- (c) in subsection (4) (duty to give advice and assistance to the Secretary of State and the OFT), in paragraph (c)—
  - (i) after “authorised”, there were inserted “ or regulated ”; and
  - (ii) for “or combined licences” there were substituted “ , combined licences or project licences ”.

#### Marginal Citations

**M17** 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.

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

**+W**

9. Section 35A <sup>M18</sup> (remuneration and standards of performance), applies as if—
- (a) in subsection (1) (application of the section), after “this Part”, there were inserted “ or any licensed infrastructure provider ”; and
  - (b) in subsection (10) (definitions), in the definition of “standards of performance”, in paragraph (a), after “this Part”, there were inserted “ or any conditions of the company's project licence ”.

#### Marginal Citations

**M18** Section 35A was inserted by section 50 of the Water Act 2003.

### General duties of relevant undertakers **E+W**

- 10.—(1) Section 37 (general duty to maintain a water supply system) applies as if—
- (a) in subsection (1)(b), for “the water undertaker's water mains” there were substituted “ such mains ”; and
  - (b) after subsection (1) there were inserted—
 

“(1A) For the purposes of subsection (1), “main” means a water main or other pipe which is owned by a licensed infrastructure provider.”
- (2) Section 94 <sup>M19</sup> (general duty to provide a sewerage system) applies as if—
- (a) in subsection (1)—
    - (i) in the words before paragraph (a), after “sewerage undertaker” there were inserted “ to ensure that all necessary arrangements are made ”; and
    - (ii) in paragraph (a), “public” were repealed; and
  - (b) after subsection (1) there were inserted—
 

“(1A) For the purposes of subsection (1), “sewer” means a public sewer or a sewer which is owned by a licensed infrastructure provider.”

### Marginal Citations

**M19** Section 94 was amended by sections 88 and 97 of the Water Act 2003, although the provisions of section 88 are not yet in force.

### Charges **E+W**

- 11.—(1) Section 142<sup>M20</sup> (powers of undertakers to charge) applies as if—
- (a) in the title, after “undertakers”, there were inserted “ and licensed infrastructure providers ”;
  - (b) in subsection (1) (powers of undertakers to fix and demand charges)—
    - (i) in the words before paragraph (a), after “relevant undertaker”, there were inserted “ and every licensed infrastructure provider ”;
    - (ii) in paragraph (b), after “undertaker”, there were inserted “ or the licensed infrastructure provider (as the case may be) ”; and
  - (c) in subsection (4) (matters etc. by reference to which charges may be fixed)—
    - (i) after “a relevant undertaker”, there were inserted “ or licensed infrastructure provider ”; and
    - (ii) after “the undertaker”, there were inserted “ or the licensed infrastructure provider (as the case may be) ”; and
  - (d) in subsection (6) (power of a relevant undertaker to fix charges otherwise than by virtue of Chapter 1 of Part 5 of the Act), after “a relevant undertaker”, there were inserted “ or licensed infrastructure provider ”.
- (2) Section 143<sup>M21</sup> (charges schemes) applies as if—
- (a) in subsection (1) (power of a relevant undertaker to make a charges scheme)—
    - (i) after “A relevant undertaker”, there were inserted “ or a licensed infrastructure provider ”; and
    - (ii) in paragraph (a), after “the undertaker”, there were inserted “ or the licensed infrastructure provider (as the case may be) ”;
  - (b) in subsection (5) (power of a relevant undertaker to enter into agreements for payment of charges), in paragraph (a)—
    - (i) after “a relevant undertaker”, there were inserted “ or licensed infrastructure provider ”; and
    - (ii) after “the undertaker”, there were inserted “ or the licensed infrastructure provider (as the case may be) ”; and
  - (c) in subsection (9) (limit on the power of the Authority as to the exercise of its power to approve charges schemes), after “relevant undertakers”, there were inserted “ or licensed infrastructure providers ”.
- (3) Section 144 (liability of occupiers etc for charges) applies as if—
- (a) after subsection (1) (liability of occupiers), there were inserted—
    - “(1A) Subject to the following provisions of this section, a licensed infrastructure provider shall be treated for the purposes of this Chapter as providing services to—
      - (a) the occupiers for the time being of any premises which—
        - (i) are supplied with water, either directly or indirectly, by infrastructure which is owned or operated by the licensed infrastructure provider;

**Status:** Point in time view as at 28/06/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)

- (ii) are drained by a sewer or drain connecting, either directly or indirectly, with infrastructure which is owned or operated by the licensed infrastructure provider; or
- (iii) are premises the occupiers of which have, in respect of the premises, the benefit of facilities which drain to a sewer or drain so connecting;
- (b) any relevant undertaker or licensed water supplier which—
  - (i) has an agreement with the licensed infrastructure provider for the supply of water, sewerage services or works; or
  - (ii) has the use of any infrastructure which is owned or operated by the licensed infrastructure provider;

and references in this Chapter to services provided by a licensed infrastructure provider in the course of carrying out its functions are to be read accordingly.

(1B) Subsection (1A)(a) does not apply to the extent that provision to the contrary is made by any agreement to which the licensed infrastructure provider is a party.”;

- (b) in subsection (2) (liability of former occupiers where charges fixed by reference to volume), after “a relevant undertaker”, there were inserted “ or licensed infrastructure provider ”;
  - (c) in subsection (3) (circumstances in which former occupiers may be made liable for charges)—
    - (i) after “any relevant undertaker”, there were inserted “or licensed infrastructure provider; and
    - (ii) in paragraph (a), after “the undertaker”, there were inserted “ or the licensed infrastructure provider (as the case may be) ”;
  - (d) in subsection (4) (meaning of “the first relevant day”)—
    - (i) after “a relevant undertaker”, there were inserted “ or licensed infrastructure provider ”; and
    - (ii) in paragraphs (a) and (c), after “the undertaker”, in each place it occurs, there were inserted “ or the licensed infrastructure provider (as the case may be) ”; and
  - (e) in subsection (5), after “water to those premises”, there were inserted “ , or liable to any licensed infrastructure provider for any charges in respect of any services provided by that licensed infrastructure provider to those premises, ”.
- (4) Section 144A <sup>M22</sup> (right of consumers to elect for charging by reference to volume) applies as if—
- (a) in subsection (5) (right of consumer to revoke a measured charges notice)—
    - (i) the “and” following paragraph (a) were repealed; and
    - (ii) paragraph (b) were repealed;
  - (b) for subsection (9) (duty of sewerage undertaker to fix charges by reference to volume), there is substituted—
 

“(9) If and so long as a water undertaker is obliged under subsection (2) above to fix charges for the supply of water in respect of any premises by reference to the volume of water supplied—

    - (a) a sewerage undertaker is under a corresponding obligation to fix charges in respect of foul water drainage provided by the sewerage undertaker in respect of those premises by reference to that volume; and

- (b) a licensed infrastructure provider is under a corresponding obligation to fix charges in respect of foul water drainage provided by the licensed infrastructure provider in respect of those premises by reference to that volume.”; and
- (c) in subsection (10) (duty of sewerage undertaker to fix charges without reference to volume) for “a sewerage undertaker is”, there were substituted “ a sewerage undertaker and a licensed infrastructure provider are ”.
- (5) Section 150B<sup>M23</sup> (meaning of “consumer” in Chapter 1), applies as if, after paragraph (a), there were inserted—
- “(aa) in relation to the provision of services by a licensed infrastructure provider in respect of any premises, means a person who is for the time being the person on whom liability to pay charges to the licensed infrastructure provider in respect of those services would fall, and”.

#### Marginal Citations

- M20** Section 142 was amended by section 120 of, and Schedule 22 to, the Environment Act 1995, and by section 3 of the [Water Industry Act 1999 \(c. 9\)](#).
- M21** Section 143 was amended by section 120 of, and Schedule 22 to, the Environment Act 1995, and by sections 3 and 4 of the Water Industry Act 1999.
- M22** Section 144A was inserted by section 6 of the Water Industry Act 1999.
- M23** Section 150B was inserted by section 15 of, and Schedule 3 to, the Water Industry Act 1999.

### Licensed infrastructure providers' works powers **E+W**

- 12.—(1) Section 158<sup>M24</sup> (powers to lay pipes in streets) applies as if—
- (a) in subsection (1) (power to lay pipes etc), after “relevant undertaker”, there were inserted “ and every licensed infrastructure provider, ”; and
- (b) in subsection (7) (meaning of “relevant pipe”), in paragraph (b), after “a sewerage undertaker”, there were inserted “ or a licensed infrastructure provider ”.
- (2) Section 159<sup>M25</sup> (power to lay pipes in other land) applies as if, in subsection (1), after “relevant undertaker”, there were inserted “ and every licensed infrastructure provider ”.
- (3) Section 161<sup>M26</sup> (power to deal with foul water and pollution) applies as if—
- (a) in subsection (1) (powers in relation to streets), after “relevant undertaker”, there were inserted “ and every licensed infrastructure provider ”; and
- (b) in subsection (2) (powers in relation to other land), after “relevant undertaker”, there were inserted “ and every licensed infrastructure provider ”.

#### Marginal Citations

- M24** Section 158 was amended by section 40 of the Competition and Service (Utilities) Act 1992, sections 97 and 101(1) of, and Schedule 8 to, the Water Act 2003 and [S.I. 2005/268](#).
- M25** Section 159 was amended by section 97 of the Water Act 2003.
- M26** Section 161 was amended by section 120 of, and Schedule 22 to, the Environment Act 1995.

*Status: Point in time view as at 28/06/2013.*

*Changes to legislation: There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)*

## **Supplemental provisions with respect to licensed infrastructure providers' works powers** E

- 13.**—(1) Section 179 <sup>M27</sup> (vesting of works in relevant undertakers) applies as if—
- (a) in the title, after “undertaker”, there were inserted “ or licensed infrastructure provider ”;
  - (b) after subsection (1), there were inserted—
    - “(1ZA) Every—
      - (a) sewer or disposal main which has been laid, in exercise of any power conferred by this Part or otherwise by a licensed infrastructure provider, and
      - (b) sewage disposal works constructed by a licensed infrastructure provider,
 shall vest in the licensed infrastructure provider.”; and
  - (c) in subsection (1A)—
    - (i) for “Subsection (1) above is” there were substituted, “Subsections (1) and (1ZA) above are”; and
    - (ii) after “relevant undertaker”, in the first place it occurs, there were inserted “ or licensed infrastructure provider (as the case may be) ”.
- (2) Section 180 applies as if for “undertakers” there were substituted “ licensed infrastructure providers ”.
- (3) Schedule 12 <sup>M28</sup> (compensation for damage caused by works etc) applies as if—
- (a) for “relevant undertaker”, “undertaker” or “sewerage undertaker”, each time it occurs, there were substituted “licensed infrastructure provider”;
  - (b) in paragraph 1 (compensation in respect of street works powers), in sub-paragraph (1), for “, 161 and 162” there were substituted “ and 161 ”;
  - (c) in paragraph 2 (compensation in respect of pipe-laying works in private land) in sub-paragraph (6) for “, 161(2) and 163” there were substituted “ and 161(2) ”; and
  - (d) paragraphs 2(4) (powers to make regulations), 4(5) (no compensation payable where sewer etc declared vested in a sewerage undertaker), 5 (compensation in respect of metering works) and 6 (compensation in respect of discharges for works purposes) were repealed.
- (4) Section 181 <sup>M29</sup> (complaints with respect to the exercise of works powers on private land) applies as if—
- (a) for “relevant undertaker” or “undertaker”, each time it occurs, there were substituted “ licensed infrastructure provider ”; and
  - (b) subsection (8) (power to make regulations) were repealed.
- (5) Section 182 (code of practice with respect to work on private land) applies as if—
- (a) in subsection (1) (duty to submit a code for approval)—
    - (i) in the words before paragraph (a), after “relevant undertaker”, there were inserted “ and every licensed infrastructure provider ”; and
    - (ii) in paragraph (a), after “appointment”, there were inserted “ or its project licence ”;
  - (b) subsections (2) and (4) (power to make an order) were repealed;
  - (c) in subsection (3) (effect of a code), the words “as a relevant undertaker” were repealed; and
  - (d) in subsection (5) (enforcement), after “relevant undertaker”, there were inserted “ and a licensed infrastructure provider ”.
- (6) Section 183 applies as if, for “relevant undertakers” there were substituted “ licensed infrastructure providers ”.

- (7) Schedule 13<sup>M30</sup> (protection for particular undertakings) applies as if—
- (a) in paragraphs 1(1) (general provisions protecting undertakings), 2 (protection for statutory powers and jurisdiction) and 4 (protection for telecommunication systems), for “relevant undertaker” or “undertaker”, each time it occurs, there were substituted “ licensed infrastructure provider ”;
  - (b) in paragraph 3 (special protection for certain undertakings in respect of street works), for sub-paragraph (5) (offence of contravening the requirements of sub-paragraph (1)), there were substituted—  
“(5) The requirements of sub-paragraph (1) above apply as if they were a duty imposed on a licensed infrastructure provider and shall be enforceable under section 18 above by the Authority.”; and
  - (c) Part 2 (further protective provisions in respect of sewerage powers) were repealed.
- (8) Section 186 (protective provisions in respect of flood defence works and watercourses etc) applies as if subsections (2) to (6), and (8) were repealed.
- (9) Section 187 (works in tidal lands etc) applies as if—
- (a) in subsections (1) and (2), for “relevant undertaker”, in both places it occurs, there were substituted “ licensed infrastructure provider ”;
  - (b) in subsection (2), for “that undertaker”, there were substituted “ that licensed infrastructure provider ”; and
  - (c) in subsection (3), for the words after “any of”, there were substituted “ sections 158, 159 and 161 above. ”.
- (10) Section 190 (saving for planning controls) applies without modification.
- (11) Section 192<sup>M31</sup> (interpretation of Part 6) applies as if—
- (a) subsections (1) (meaning of water discharge pipe), (3), (3A) and (3B) (provisions for works outside a relevant undertaker's appointment area) were repealed; and
  - (b) in subsection (4) (certain obligations to maintain etc a pipe) after “relevant undertaker” or “undertaker”, each time it occurs, there were inserted “or licensed infrastructure provider”.

#### Marginal Citations

**M27** Section 179 was amended by sections 92, 97 and 101(1) of, and Schedule 8 to, the Water Act 2003. Section 179 was also amended by sections 62, 86 and 146 of, and Schedules 13, 14 and 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15), although the provisions are not yet in force.

**M28** Schedule 12 was amended by section 56 of the Competition and Service (Utilities) Act 1992, section 97 of the Water Act 2003 and S.I. 2009/1307.

**M29** Section 181 was amended by section 101(1) of, and Schedule 7 to, the Water Act 2003.

**M30** Schedule 13 was amended by section 67 of, and Schedule 9 to, the Coal Industry Act 1994 (c. 21); section 120 of, and Schedule 22 to, the Environment Act 1995; section 37 of, and Schedule 5 to the Transport Act 2000 (c. 38); section 406 of, and Schedule 17 to, the Communications Act 2003 (c. 21); section 143 of, and Schedule 19 to, the Energy Act 2004 (c. 20); and by S.I. 2001/1149. The effect of certain provisions in Schedule 13 was modified by section 16 of, and Schedule 4 to, the Gas Act 1986 (c. 44) and section 76 of the Utilities Act 2000 (c. 27).

**M31** Section 192 was amended by section 47 of the Competition and Service (Utilities) Act 1992.

#### Functions in relation to information **E+W**

- 14.—(1) Section 195<sup>M32</sup> (the Authority's register) applies as if—

**Status:** Point in time view as at 28/06/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)

- (a) in subsection (1) (register to be maintained in a certain place, in a certain form and for certain purposes), for “and of section 143 above” there were substituted “, of section 143 above and of the Regulations”;
- (b) 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 Regulations (other than a notice issued under regulation 9);”.
- (2) Section 195A<sup>M33</sup> (reasons for decisions) applies as if, in subsection (1) (decisions for which reasons must be published)—
  - (a) the “and” following paragraph (f) were repealed; and
  - (b) after paragraph (f), there were inserted—
    - “(fa) the giving of any notice under the Regulations (other than a notice issued under regulation 9); and”.
- (3) Section 199<sup>M34</sup> (sewer maps) applies as if—
  - (a) after subsection (1) (duty to keep records), there were inserted—
    - “(1A) Subject to subsection (6) below, it shall be the duty of every licensed infrastructure provider to keep records of the location and relevant particulars of every sewer or disposal main owned by it.”;
  - (b) in subsection (3) (maintenance of separate records for each local authority area)—
    - (i) after “a sewerage undertaker”, there were inserted “ or a licensed infrastructure provider”;
    - (ii) after “that undertaker”, there were inserted “ or licensed infrastructure provider”;
    - and
    - (iii) after “the undertaker”, there were inserted “ or the licensed infrastructure provider”;
  - (c) in subsection (4) (availability of records)—
    - (i) after “every sewerage undertaker”, there were inserted “ and every licensed infrastructure provider”;
    - and
    - (ii) after “the undertaker”, there were inserted “ or licensed infrastructure provider (as the case may be)”;
  - (d) in subsection (5) (information to be available as a map), after “a sewerage undertaker”, there were inserted “ or a licensed infrastructure provider”;
  - and
  - (e) in subsection (9) (enforcement), after “a sewerage undertaker”, there were inserted “ or a licensed infrastructure provider”.
- (4) Section 200 (provision of sewer maps to local authorities) applies as if—
  - (a) in subsection (1) (duty to provide local authorities with records), after “every sewerage undertaker”, there were inserted “ and every licensed infrastructure provider”;
  - and
  - (b) in subsections (2) (local authority to make records available) and (4) (enforcement), after “a sewerage undertaker” each time they appear, there were inserted “ or a licensed infrastructure provider”.
- (5) Section 201<sup>M35</sup> (publication of certain information and advice) applies as if, in subsection (1) (b), after “authorised”, there were inserted “ or regulated”.
- (6) Section 202<sup>M36</sup> (duties of undertakers and licensed water suppliers to furnish the Secretary of State with information) applies as if—
  - (a) in the title, after “undertakers” there were inserted “ etc”;



- (b) in subsection (1A) (duties of licensed water suppliers to furnish information), in paragraph (a), after “authorised”, there were inserted “ or regulated ”; and
  - (c) in subsection (5) (enforcement under section 18 of the Act), for “or licensed water supplier” there were substituted “ , licensed water supplier or licensed infrastructure provider ”.
- (7) Section 203<sup>M37</sup> (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 another company holding a licence under that Chapter ”; and
  - (b) subsections (4) and (5) (offences) were repealed.
- (8) Section 205<sup>M38</sup> (exchange of metering information between service providers) applies as if, in subsection (4), after paragraph (a), there were inserted—
- “(aa) any licensed infrastructure provider; and”.

#### Marginal Citations

- M32** 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.
- M33** Section 195A was inserted by section 51 of the Water Act 2003.
- M34** Section 199 was amended by section 97 of the Water Act 2003.
- M35** 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.
- M36** 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.
- M37** Section 203 was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003.
- M38** Section 205 was amended by section 101(1) of, and Schedule 8 to, the Water Act 2003.

#### Powers of direction conferred on the Secretary of State in relation to national security and civil emergencies **E+W**

15. Section 208<sup>M39</sup> (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 licensed 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 licensed 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), for “or licensed water supplier”, in both places it occurs, there were substituted “ , licensed water supplier or licensed infrastructure provider ”.

#### Marginal Citations

- M39** Section 208 was amended by section 101(1) of, and Schedules 7 and 8 to, the Water Act 2003.

*Status: Point in time view as at 28/06/2013.*

*Changes to legislation: There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)*

## General provisions **E+W**

- 16.—(1) Section 212 (judicial disqualification) applies as if—
- (a) after “a relevant undertaker”, there were inserted “ or a licensed infrastructure provider ”; and
  - (b) after “that undertaker”, there were inserted “ or licensed infrastructure provider ”.
- (2) Section 219 (general interpretation) applies as if—
- (a) in subsection (1) (definitions)—
    - (i) for the definition of “customer or potential customer” there were substituted—
 

““customer or potential customer” means—

      - (a) in relation to a company holding an appointment under Chapter 1 of Part 2 of this Act—
        - (i) any person for or to whom 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) any person who might become such a person on making an application for the purpose to the company; and
      - (b) in relation to a licensed infrastructure provider—
        - (i) any person for or to whom that licensed infrastructure provider provides any services in the course of carrying out its functions; or
        - (ii) any person for or to whom that licensed infrastructure provider might provide any services in the course of carrying out its functions;”;
    - (ii) for the definition of “functions” there were substituted—
 

““functions” means—

      - (a) in relation to a licensed infrastructure provider, the activities regulated by its project licence and any statutory functions conferred or imposed on it in consequence of its project licence; and
      - (b) in relation to a relevant undertaker, the functions of the undertaker under or by virtue of any enactment and shall be construed subject to section 217 above;”;
    - (iii) in the definition of “protected land”, after “ “protected land”, ” there were inserted “ in relation to a company which is a licensed infrastructure provider means any land which, or interest or right in or over land which, is held by that company for purposes connected with the carrying out of its functions and, ”; and
    - (iv) the following definitions were inserted at the appropriate place—
 

““project licence” must be construed in accordance with Chapter 1A of Part 2 above;”;

““the Regulations” means the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013;”;
  - (b) after subsection (4A) (references to the supply system of a water undertaker), there were inserted—
 

“(4B) In this Act, “incumbent undertaker”, “infrastructure”, “infrastructure project” and “licensed infrastructure provider” each have the meaning given in the Regulations.”.

SCHEDULE 2 **E+W**

Regulation 6

## APPLICATION OF THE UTILITIES CONTRACTS REGULATIONS 2006

**PART 1** **E+W**

<b><i>Provision applied</i></b>	<b><i>Modification</i></b>
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 referred to in this Schedule.
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 references to being admitted to a dynamic purchasing system were omitted.
regulation 29 (corporations).	Paragraph (1) applies as if the reference to being admitted to a dynamic purchasing system were omitted.
regulation 29A (notification).	Paragraph (4) does not apply.

**Status:** Point in time view as at 28/06/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)

<p>regulation 30 (criteria for the award of a contract).</p>	<p>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.</p>
<p>regulation 33 (information about contract award procedures).</p>	<p>Paragraph (6A) does not apply; paragraph (7) applies as if “or a dynamic purchasing system” were omitted; 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 sub-paragraph (b)(ii) were omitted.</p>
<p>regulation 33A (standstill period).</p>	
<p>regulation 35 (obligations relating to taxes, environmental protection, employment protection and working conditions).</p>	
<p>regulation 36 (conditions for performance of contracts).</p>	
<p>regulation 37 (preservation of records).</p>	<p>Paragraphs (1)(b) and (2) do not apply</p>
<p>regulation 40 (publication of notices).</p>	<p>Paragraphs (5) and (7) do not apply.</p>
<p>regulation 41 (confidentiality of information).</p>	
<p>regulation 42 (means of communication).</p>	
<p>regulation 43 (sub-contracting).</p>	
<p>Part 9 (applications to the Court)</p>	

---

## PART 2 E+W

### “PART 9 E+W”

#### APPLICATIONS TO THE COURT

##### **Enforcement of obligations**

**45.**—(1) The obligation on an incumbent undertaker to comply with the provisions of these Regulations, other than regulation 30(9), 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 on which 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 date 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—
    - (i) 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
    - (ii) 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 those 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

**Status:** Point in time view as at 28/06/2013.

**Changes to legislation:** There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013. (See end of Document for details)

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.”

**Status:**

Point in time view as at 28/06/2013.

**Changes to legislation:**

There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013.