



Water Act 2014

2014 CHAPTER 21

PART 1

WATER INDUSTRY

CHAPTER 4

RETAIL EXIT: NON-HOUSEHOLD PREMISES

42 Retail exit: non-household premises

- (1) The Secretary of State may by regulations (“exit regulations”)—
 - (a) make provision for a relevant undertaker whose area is wholly or mainly in England to apply to withdraw from the non-household retail market in relation to that area,
 - (b) make provision about the determination of an application under paragraph (a) (an “exit application”),
 - (c) make provision for and in connection with the transfer of so much of a relevant undertaker's undertaking as relates to the non-household retail market to an eligible licensee or licensees, and
 - (d) make provision about the operation of the water industry in relation to an area in respect of which an exit application has been granted (a “retail exit area”).
- (2) Provision under subsection (1)(a) may require a company that is a water undertaker and a sewerage undertaker to make an exit application that relates both to its functions as a water undertaker and to its functions as a sewerage undertaker, subject to such exceptions as exit regulations may specify.
- (3) Exit regulations may include provision for protecting customers affected by a relevant undertaker's withdrawal from the non-household retail market.
- (4) For the purposes of this Chapter—

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- (a) a reference to a water undertaker withdrawing from the non-household retail market in relation to an area is a reference to a water undertaker ceasing, in relation to that area, to exercise such functions relating to the supply of water to non-household premises as are specified in exit regulations, and
 - (b) a reference to a sewerage undertaker withdrawing from the non-household retail market in relation to an area is a reference to a sewerage undertaker ceasing, in relation to that area, to exercise such functions relating to the provision of sewerage services in respect of non-household premises (including trade effluent functions) as are specified in exit regulations;
- and a reference to the non-household retail market is to be construed accordingly.
- (5) Exit regulations may—
- (a) prohibit a water undertaker from exercising, in relation to a retail exit area, such functions relating to the supply of water to non-household premises as are specified in the regulations;
 - (b) prohibit a sewerage undertaker from exercising, in relation to a retail exit area, such functions relating to the provision of sewerage services in respect of non-household premises (including trade effluent functions) as are specified in the regulations.

Commencement Information

II S. 42 in force at 6.4.2015 by S.I. 2015/773, art. 2(2)(b)(i) (with art. 5)

43 Application for retail exit

- (1) Exit regulations about exit applications must make provision requiring a relevant undertaker to apply to the Secretary of State, and may include—
- (a) provision requiring a relevant undertaker to take such steps as the regulations may specify before making an application;
 - (b) provision as to the form and manner in which an application is to be made and as to the contents of an application;
 - (c) provision about payment to the Secretary of State of a fee of an amount specified in or determined under the regulations;
 - (d) provision about the information that is to accompany an application;
 - (e) provision for the Secretary of State to require a relevant undertaker to provide such further information as the Secretary of State may require in order to make a determination;
 - (f) provision as to the grounds on which an application may be refused;
 - (g) provision for the Secretary of State to grant an application subject to conditions.
- (2) Provision under subsection (1)(a) may require a relevant undertaker—
- (a) to consult—
 - (i) its non-household customers and its other customers,
 - (ii) the WSRA,
 - (iii) the Chief Inspector of Drinking Water,
 - (iv) the Consumer Council for Water, and
 - (v) any other person specified in the regulations;

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- (b) to prepare and publish a report assessing the effect on non-household customers and other customers if the undertaker withdraws from the non-household retail market;
 - (c) to publish notice of its proposed exit application in such manner as the regulations may specify.
- (3) The grounds that may be specified under subsection (1)(f) include—
 - (a) grounds relating to the public interest or to the interests of a section of the public;
 - (b) grounds relating to the interests of non-household customers or other customers;
 - (c) grounds relating to costs associated with a transfer of part of the relevant undertaker's undertaking;
 - (d) grounds relating to the eligible licensee or licensees to which a transfer of part of the relevant undertaker's undertaking is proposed to be made.
- (4) The conditions that may be imposed under subsection (1)(g) include—
 - (a) conditions as to the persons who are to pay the costs associated with a transfer of a part of the relevant undertaker's undertaking;
 - (b) conditions as to the application of money received by the relevant undertaker in connection with a transfer of a part of its undertaking;
 - (c) conditions about the relevant undertaker giving consent to modifications of the undertaker's conditions of appointment;
 - (d) conditions about an eligible licensee to which a transfer of part of the relevant undertaker's undertaking is proposed to be made giving consent to modifications of the conditions of its water supply licence or sewerage licence;
 - (e) conditions about the treatment of non-household customers affected by the transfer of part of the relevant undertaker's undertaking.
- (5) Exit regulations may make provision about how particular descriptions of customers and premises are affected by a relevant undertaker's withdrawal from the non-household retail market, including in particular any of the following—
 - (a) premises to which the supply of water has been disconnected,
 - (b) premises that are to be demolished,
 - (c) premises that are temporarily unoccupied,
 - (d) premises in relation to which the owner or occupier has served notice under section 63AA of the Water Industry Act 1991 (supply by water supply licensee: domestic supply),
 - (e) premises in relation to which the owner or occupier has served notice under section 63AB of the Water Industry Act 1991 (supply by water supply licensee: non-domestic supply), and
 - (f) premises in relation to which the owner or occupier has served notice under section 110K of the Water Industry Act 1991 (provision by sewerage licensee).
- (6) Provision under subsection (5) may include provision about how exit applications deal with particular descriptions of customers and premises.
- (7) Exit regulations may make provision about the disclosure by a relevant undertaker of such information as the regulations may specify about—
 - (a) its non-household customers, and

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- (b) the charges payable by them (whether payable under a charges scheme under section 143 of the Water Industry Act 1991 or under an agreement).
- (8) Exit regulations may specify—
 - (a) the persons to whom the information may be disclosed;
 - (b) the purposes for which it may be disclosed.

Commencement Information

I2 S. 43 in force at 6.4.2015 by S.I. 2015/773, art. 2(2)(b)(ii) (with art. 5)

44 Eligible licensees

- (1) Exit regulations may—
 - (a) make provision for a relevant undertaker to specify in its exit application the eligible licensee or licensees to which it proposes to transfer a part of its undertaking;
 - (b) make provision for the WSRA to direct one or more eligible licensees to accept the transfer of a part of the relevant undertaker's undertaking.
- (2) In this Chapter an “eligible licensee” is a company—
 - (a) that has a water supply licence with a retail authorisation or a sewerage licence with a retail authorisation, or both, and
 - (b) that has elected to be an eligible licensee for the purposes of this Chapter.
- (3) Exit regulations may—
 - (a) provide for an eligible licensee to be specified in an exit application only if the licensee agrees to be so specified;
 - (b) provide for the WSRA to give notice before giving a direction under subsection (1)(b);
 - (c) provide for an eligible licensee to temporarily suspend an election under subsection (2)(b) so that it may not be given a direction under subsection (1)(b).
- (4) Exit regulations may make provision about electing to be an eligible licensee, and may in particular—
 - (a) provide for a company to satisfy such criteria as are set out in a code published by the WSRA before the company may elect to be an eligible licensee;
 - (b) provide for the WSRA to assess whether a company satisfies those criteria;
 - (c) provide for the WSRA to publish a code setting out—
 - (i) the criteria mentioned in paragraph (a), and
 - (ii) how it conducts such assessments;
 - (d) provide for the WSRA to comply with the code in making such assessments.
- (5) Exit regulations may—
 - (a) allow an eligible licensee, to which a transfer of a part of a relevant undertaker's undertaking is proposed to be made, to be a company associated with the undertaker,
 - (b) require the eligible licensee to which such a transfer is made to be such a company, or

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- (c) prohibit such a transfer being made to such a company.
- (6) For the purposes of this section, a relevant undertaker is associated with an eligible licensee if one of them is a subsidiary of the other or both are subsidiaries of the same body corporate.

Commencement Information

I3 S. 44 in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(iii\)](#) (with art. 5)

45 Transfer of undertaking

- (1) Exit regulations about the transfer of a part of a relevant undertaker's undertaking may include provision for the making of a scheme to transfer property, rights and liabilities where an exit application has been granted.
- (2) Exit regulations about the transfer of a part of a relevant undertaker's undertaking may include provision about arrangements under Chapter 1 of Part 5 of the Water Industry Act 1991 for fixing, demanding and recovering charges.
- (3) Provision under subsection (2) may include—
 - (a) provision for and in connection with treating such arrangements as if they were agreements between the undertaker and the person liable to pay such charges;
 - (b) provision about the terms and conditions of such agreements.
- (4) Exit regulations may make provision for a scheme under subsection (1) to contain—
 - (a) provision identifying the property, rights and liabilities to be transferred (which may include property, rights and liabilities that would not otherwise be capable of being transferred);
 - (b) provision for the division of property, rights and liabilities, including—
 - (i) provision creating an interest in or right over property;
 - (ii) provision creating new rights and liabilities;
 - (iii) incidental provision as to the property, rights and liabilities of other persons;
 - (c) provision about the consideration to be provided (and about the enforcement of such provision).
- (5) Subsection (4) is not exhaustive of what a scheme may contain.

Commencement Information

I4 S. 45 in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(iv\)](#) (with art. 5)

46 Operation of retail market

- (1) Exit regulations about the operation of the water industry in relation to a retail exit area may include such provision as is described in the following subsections.
- (2) Exit regulations may make provision for and in connection with requiring a relevant undertaker to impose on an eligible licensee only such charges under a section 66D

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agreement or a section 117E agreement as would enable the licensee to fulfil its obligations under agreements (including deemed agreements) transferred to the licensee from the undertaker under the regulations.

- (3) Exit regulations may make provision for and in connection with requiring a water supply or sewerage licensee, where the licensee is providing services under the licensee's licence in relation to a retail exit area, to provide such services under that licence in relation to that area as the regulations may specify.
- (4) Exit regulations may make provision for and in connection with such arrangements between a water supply or sewerage licensee and a relevant undertaker as would enable the licensee to comply with requirements imposed on it under subsection (3).
- (5) Exit regulations may make provision as to the functions of a relevant undertaker in relation to a retail exit area and may, in particular, modify or disapply a duty imposed on a relevant undertaker by—
 - (a) section 63AC(2) (interim duty to supply water), or
 - (b) section 110L(2) (interim duty to provide sewerage services).
- (6) Exit regulations may provide for a water supply or sewerage licensee that—
 - (a) is a company,
 - (b) is providing services under its licence in relation to a retail exit area, and
 - (c) satisfies such criteria as may be specified by the regulations (which may include criteria as to market share),
 to be subject to provision for special administration (see section 23 of, and Schedule 2 to, the Water Industry Act 1991) in such circumstances as the regulations may specify.
- (7) Exit regulations may include provision—
 - (a) requiring relevant undertakers, water supply licensees and sewerage licensees to provide such information as the regulations may specify to customers;
 - (b) requiring relevant undertakers, water supply licensees and sewerage licensees to provide such information as the regulations may specify to the WSRA or the Secretary of State;
 - (c) requiring the WSRA to record such information as the regulations may specify in the register it maintains under section 195 of the Water Industry Act 1991.
- (8) Provision under subsection (7)(b) may in particular specify information about customers and the arrangements under which they receive services.

Commencement Information

I5 S. 46 in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(v\)](#) (with art. 5)

47 Operation of retail market: charges etc

- (1) Exit regulations may make provision for water supply licensees and sewerage licensees, that are providing or proposing to provide services under their water supply or sewerage licences in relation to a retail exit area, to make, and from time to time revise, a scheme containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to such services.
- (2) Provision under subsection (1) may include—

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- (a) provision for a scheme to make different provision for different purposes, or different areas;
 - (b) provision about the publication of a scheme or revised scheme;
 - (c) provision about sending a copy of a scheme or revised scheme to the WSRA;
 - (d) provision enabling the WSRA to direct that terms or conditions be modified generally or in a particular case;
 - (e) provision requiring a licensee to comply with a direction under paragraph (d), including provision for enforcing such a duty under section 18 of the Water Industry Act 1991.
- (3) Provision under subsection (1) may also include—
- (a) provision requiring the WSRA to issue a code about providing services to which a scheme under subsection (1) relates;
 - (b) provision for the code to include, in particular, provision about—
 - (i) the terms and conditions contained in such schemes;
 - (ii) licensees informing owners or occupiers of premises about their schemes before agreeing any terms and conditions for the provision of services;
 - (c) provision for the WSRA, if it considers that a licensee is not acting as required by such provision as is described in paragraph (b), to give the licensee a direction to do, or not to do, a particular thing specified in the direction;
 - (d) provision requiring a licensee to comply with a direction under paragraph (c), including provision for enforcing such a duty under section 18 of the Water Industry Act 1991;
 - (e) provision requiring the WSRA from time to time to review the code and, if appropriate, to issue a revised code.
- (4) Exit regulations may make provision for the WSRA to issue and enforce—
- (a) rules about charges for services that may be imposed by water supply or sewerage licensees in relation to a retail exit area;
 - (b) if exit regulations make provision for licensees to make schemes about such charges, rules about such schemes.
- (5) Provision under subsection (4) may include—
- (a) provision for the rules to make different provision for different cases;
 - (b) provision for the WSRA to direct a licensee to comply with the rules;
 - (c) provision for such directions to be enforceable by the WSRA under section 18;
 - (d) provision for the Secretary of State to issue guidance as to the content of the rules;
 - (e) provision for the Secretary of State to prevent rules being issued.

Commencement Information

16 S. 47 in force at 6.4.2015 by S.I. 2015/773, **art. 2(2)(b)(vi)** (with art. 5)

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PROSPECTIVE

48 Exit applications: further provision

- (1) Exit regulations may make provision about the provision relating to exit applications that may be included in a relevant undertaker's conditions of appointment.
- (2) Exit regulations may in particular prohibit the inclusion of provision requiring a relevant undertaker to make an exit application.
- (3) Exit regulations may make provision for requiring the WSRA or the CMA to obtain the consent of the Secretary of State—
 - (a) before exercising a function so as to require a relevant undertaker to make an exit application, or
 - (b) before exercising a function in a way that is likely to result in a relevant undertaker making an exit application.

49 Modification of appointment and licence conditions

- (1) Exit regulations may provide for the WSRA to modify the conditions of appointment of a relevant undertaker where it considers it necessary or expedient to do so in consequence of the transfer of part of the relevant undertaker's undertaking under the regulations.
- (2) Exit regulations may provide for the WSRA to modify the conditions of a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 where it considers it necessary or expedient to do so in consequence of the transfer to the holder of that licence of part of a relevant undertaker's undertaking under the regulations.
- (3) Exit regulations may provide for the WSRA, where it modifies conditions under subsection (1) or (2), to make such incidental or consequential modifications of other conditions of the appointment or, as the case may be, other conditions of the licence as it considers necessary or expedient.
- (4) Provision made by exit regulations as regards the modification of conditions under this section may include—
 - (a) provision for the Secretary of State to give consent to a modification proposed by the WSRA;
 - (b) provision as to the period during which a modification may be made.
- (5) Provision under subsection (4)(b) may not allow a modification to be made after the end of the period of one year beginning with the day on which the transfer in question takes place.

Commencement Information

I7 S. 49 in force at 6.4.2015 by S.I. 2015/773, art. 2(2)(b)(vii) (with art. 5)

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PROSPECTIVE

50 General directions

- (1) Exit regulations may make provision for the Secretary of State to publish, from time to time, a statement setting out general directions for the WSRA and the CMA as regards the carrying out of their relevant functions in circumstances where the WSRA or the CMA, in carrying out those functions, might be able—
 - (a) to require or bring about an exit application, or
 - (b) to have an effect as regards the making of an exit application.
- (2) Exit regulations may require the WSRA and the CMA to carry out their relevant functions in accordance with any statement published under the regulations.
- (3) Exit regulations may make provision about formulating a statement to be published under the regulations, and may in particular—
 - (a) require the Secretary of State to have regard to—
 - (i) the duties of the WSRA mentioned in section 2(1)(b) of the Water Industry Act 1991,
 - (ii) the duties of the CMA under the Competition Act 1998 or the Enterprise Act 2002, and
 - (iii) the protection of the interests of consumers (within the meaning of section 2 of the Water Industry Act 1991), and
 - (b) enable the Secretary of State to have regard to such other matters as the Secretary of State thinks fit.
- (4) Exit regulations may make provision for the Secretary of State, before publishing a statement under the regulations, to consult—
 - (a) the WSRA,
 - (b) the CMA,
 - (c) the Consumer Council for Water,
 - (d) relevant undertakers,
 - (e) water supply licensees and sewerage licensees,
 - (f) the Welsh Ministers, and
 - (g) anyone else the Secretary of State thinks appropriate.
- (5) Exit regulations may—
 - (a) require the Secretary of State to lay a draft of a statement before Parliament before publishing it;
 - (b) require the Secretary of State to wait for a period specified in or determined under the regulations after laying the draft statement under paragraph (a);
 - (c) prohibit the Secretary of State from publishing it if, within that period, either House of Parliament resolves not to approve it.
- (6) In this section “relevant function” means—
 - (a) in relation to the WSRA, a function mentioned in section 2(1)(b) of the Water Industry Act 1991;
 - (b) in relation to the CMA, a function of the CMA under the Competition Act 1998 or the Enterprise Act 2002.

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51 Exit regulations: general

- (1) Exit regulations may make such provision as the Secretary of State considers appropriate—
 - (a) for modifying a person's duties and powers, and
 - (b) for imposing new duties and conferring new powers on a person.
- (2) The persons in relation to whom provision under subsection (1) may be made include—
 - (a) the Secretary of State;
 - (b) the Chief Inspector of Drinking Water;
 - (c) the Welsh Ministers;
 - (d) the Chief Inspector of Drinking Water for Wales if there is one, or the Chief Inspector of Drinking Water if section 86(1B)(b) of the Water Industry Act 1991 applies;
 - (e) the WSRA;
 - (f) the CMA;
 - (g) the Environment Agency;
 - (h) the NRBW;
 - (i) the Consumer Council for Water;
 - (j) relevant undertakers;
 - (k) water supply licensees and sewerage licensees.
- (3) Exit regulations may—
 - (a) apply enactments, with or without such modifications as the Secretary of State thinks fit;
 - (b) amend, repeal or revoke enactments.
- (4) The provision that may be made by exit regulations includes provision conferring power to make subordinate legislation.
- (5) Exit regulations may—
 - (a) contain such consequential, incidental, supplementary, transitional or saving provisions (including provisions amending, repealing or revoking enactments) as the Secretary of State considers appropriate, and
 - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or areas.
- (6) In this section “enactment”—
 - (a) includes an Act or Measure of the National Assembly for Wales;
 - (b) includes an enactment contained in this Act, other than this Chapter.

Commencement Information

18 S. 51 in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(viii\)](#) (with art. 5)

52 Interpretation

- (1) In this Chapter—

“the CMA” means the Competition and Markets Authority;

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- “eligible licensee” has the meaning given by section 44;
- “exit application” means an application under section 42(1)(a);
- “the NRBW” means the Natural Resources Body for Wales;
- “non-household customer” means a person who is the customer as regards a service provided in respect of non-household premises;
- “non-household premises” means premises other than household premises as defined in section 17C of the Water Industry Act 1991;
- “retail exit area” has the meaning given by section 42;
- “the WSRA” means the Water Services Regulation Authority.

- (2) Except in so far as the context otherwise requires, terms used in this Chapter have the same meaning as in the Water Industry Act 1991.

Commencement Information

I9 S. 52 in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(ix\)](#) (with art. 5)

53 Procedure

- (1) Before making exit regulations, the Secretary of State is to consult—
- (a) the Welsh Ministers;
 - (b) the WSRA;
 - (c) the CMA;
 - (d) the Consumer Council for Water;
 - (e) relevant undertakers whose areas are wholly or mainly in England;
 - (f) water supply licensees and sewerage licensees;
 - (g) persons whom the Secretary of State considers to represent the interests of investors in the water industry.
- (2) The power to make exit regulations is to be exercised by statutory instrument.
- (3) A statutory instrument containing exit regulations made by the Secretary of State may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

Commencement Information

I10 S. 53(1)(a)-(e) (g) (2) (3) in force at 6.4.2015 by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(x\)](#) (with art. 5)

I11 S. 53(1)(f) in force at 6.4.2015 for specified purposes by [S.I. 2015/773](#), [art. 2\(2\)\(b\)\(x\)](#) (with art. 5)

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