

WATER ACT 2014

EXPLANATORY NOTES

SCHEDULES

Schedule 11: Orders under section 91: further provision

378. **Schedule 11** describes some of the transitional provision that may be made in an order made under section 91. In particular it is expected that the power to make provision by order under section 91 will be used to enable the reforms of the water supply licensing regime (see sections 1 and 2 and Schedules 1, 2 and 5) to be implemented in stages.
379. Under paragraph 2, an order under section 91 may be used to make provisions in an order to allow Ofwat to revoke existing water supply licences as part of the transition to the new water supply licensing regime. The power provides flexibility for Ofwat to allow existing licences to continue until new licences are available or until they are revoked on a specified day. The order may also provide for compensation to be payable to the holders of revoked licences. Paragraph 3 concerns how the provisions about modifying conditions of licences are supposed to work where old licences are allowed to continue in effect after commencement of section 1 and Schedules 1 and 2. Paragraph 4 provides for the situation when section 5 and Schedule 5, relating to areas of undertakers wholly or mainly in Wales, are commenced after section 1 and Schedules 1 and 2. In that case, compensation may be payable where a person is no longer able to do such things that it had previously been doing under its restricted retail and, where applicable, supplementary authorisations.
380. Under paragraph 5, the Secretary of State may also make transitional provisions for existing sewerage arrangements with sewerage undertakers that become licensable arrangements under the sewerage licence. Compensation is payable if it is no longer possible for some sewerage arrangements to continue because a sewerage licence is required.
381. Under paragraph 6, an order under section 91 may be used to keep the threshold requirement in place for retail customers served by a licensee who is using water that the licensee obtains using the licensee's wholesale authorisation, but not if the water being used comes from the local water undertaker. The threshold requirement in section 17D may continue to have effect, and the WIA may be modified so as to enable this to happen.
382. It is intended to bring aspects of the reformed wholesale arrangements into operation later than the reformed retail arrangements. Paragraph 7 allows provisions within the WIA, as it will be amended by the Act, to apply to the new wholesale authorisations with modifications for a transitional period. It also allows provisions of the existing WIA to apply to the new wholesale authorisations during a transitional period. Paragraph 8 makes similar provision for the new supplementary authorisation.
383. When and if new licences are issued that replace any existing licences, paragraph 9 enables the continuation and modification of any existing water supply and access agreements (section 66D agreements) between water undertakers and licensees that relate to the licences being replaced. This will enable the agreements to continue to operate and supplies of water to continue to be made.

384. Charges under existing section 66D agreements are subject to the “costs principle” (see existing sections 66D(3) and 66E). Paragraph 10 would enable the new section 66E (which replaces the costs principle with rules about charges) to have effect as regards charges under existing section 66D agreements. Paragraph 10 might be used so that the new rules on charges apply as regards retail and restricted retail authorisations and the costs principle continues to apply as regards wholesale and supplementary authorisations.