

**EXPLANATORY MEMORANDUM TO THE
WATER SUPPLY LICENCE (APPLICATION) REGULATIONS 2005**

2005 No. 1638

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs (Defra) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Water Act 2003 (WA03) amends the Water Industry Act 1991 (WIA91) to permit a company that holds a water supply licence to have access to a water undertaker's supply system to supply water to eligible premises. These Regulations state that applications for licences must be made to the Office of Water Services (Ofwat), the economic regulator for the water industry.

2.2 These Regulations require Ofwat to issue guidance, following consultation, determining the process for applying for a licence, including what information and documents will be required. They also set the level of the licence application fees that potential licensees will have to pay to have their applications assessed. Finally, the Regulations prescribe how an application for a licence is to be publicised and how stakeholders can make representations about a particular application.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The WA03 amends the WIA91 to extend opportunities for competition within England and Wales. Among other things, it provides a specific framework for access to the public water supply system, by permitting a licensed water supplier (licensee) to have access to a water undertaker's supply system, in certain circumstances, for the purpose of supplying water to customers' eligible premises. It also prohibits (subject to exceptions and exemptions) access for anyone that is not a licensee or, in some circumstances, another water undertaker. Potential suppliers must therefore apply for a water supply licence in order to compete to supply customers at eligible premises using a water undertaker's supply system.

4.2 There will be two types of water supply licences. Retail licences will allow the licensee to purchase water wholesale from water undertakers and to retail it to customers at eligible premises. Combined licences will additionally allow the licensee to introduce water into a water undertaker's supply system for the purpose of retailing it to customers.

4.3 Section 17F(1) WIA91 provides for the Secretary of State to prescribe the form and manner in which applications for a licence shall be made, and to prescribe the information and documents that the application shall contain. Section 213 WIA91 permits the Secretary of State to require Ofwat to set out these requirements in guidance. Section 17F(1) WIA91 also provides for the Secretary of State to prescribe the levels of fees payable by applicants. Section 17F(2) and (5) WIA91 enable the

Secretary of State to prescribe the manner and timing of the publication of a notice of application. Finally, section 17F(3) and (5) WIA91 permit the Secretary of State to set certain requirements with respect to third party representations on applications for water supply licences. These Regulations are the first use of these powers under section 17F WIA91.

4.4 During the passage of the Water Bill, during Committee stage in the House of Commons, the then Minister for Environment and Agri-Environment, Elliot Morley, stated that the level of water supply licence application fees would be prescribed in regulations laid before Parliament (Hansard, 16 October 2003, Standing Committee D, column 270).

4.5 These Regulations are one of a number of Statutory Instruments required to implement the new provisions of the WIA91 related to the new water supply licensing regime. However, legally, these Regulations stand alone.

5. Extent

5.1 This instrument extends and applies to England and Wales.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 The new water supply licensing provisions were developed in the light of the responses received by Defra and the Welsh Assembly Government (the Assembly) to their joint public consultation on 'Extending Opportunities for Competition in the Water Industry in England and Wales' (July 2002).

7.2 The Government believes that properly managed, competition should lead to greater efficiencies, keener prices, innovation and better services, to the benefit of customers. The potential benefits of competition must at the same time be balanced against the Government's wider objectives to protect public health, protect and improve the environment, meet the Government's social goals, and to safeguard services to customers.

7.3 As part of the implementation of the water supply licensing provisions in the WIA91, Defra, the Assembly and Ofwat published a consultation paper on "Eligibility, licensing, customer transfer protocol and strategic supplies" in October 2004. This consultation paper sought views on draft guidance and proposed Statutory Instruments to implement the water supply licensing regime, including the policy proposals for Ofwat's guidance on applying for a water supply licence and these Regulations. This guidance, once issued, will become the statutory guidance under the Regulations. Prospective licensees will be able to apply for a water supply licence from 1 August 2005.

7.4 Comments on the draft Regulations mostly related to the level of the fee, which is related to the rigour in assessing the applications. While most respondents supported the proposals for a single fee per type of licence application and the principle that fees should be cost-reflective, a number of respondents believed the fees were too low and would not cover the costs of assessing the applications. A number of respondents also suggested that licence application fees and costs should be

ringfenced. Following further work on the expected cost of assessing applications, the proposed licence application fees in the consultation document have been revised to the application fees included in the Regulations. These are:

- £2,000 for an application for a retail licence;
- £2,500 for an application for a combined licence;
- £1,350 for an application for a variation from an existing retail licence to a combined licence; and
- £550 for an application for a variation from an existing combined licence to a retail licence.

7.5 The consultation document is available on Ofwat's website at www.ofwat.gov.uk. The Government's response to the consultation on the draft Regulations will shortly be published in Defra's website at www.defra.gov.uk.

8. Impact

8.1 No regulatory impact assessment has been prepared in respect of these Regulations. A regulatory impact assessment in respect of the WA03 was prepared and placed in the library of each House of Parliament during the passage of the Water Bill. This included an assessment of water supply licensing regime. Copies can be obtained from Water Supply and Regulation Division, Defra, Ashdown House, 123 Victoria Street, London SW1E 6DE or from the Defra's website at www.defra.gov.uk/environment/water/legislation.

9. Contact

Nieves Bottomley at Defra can answer any queries regarding the instrument:
Tel: 020-7082 8337 or e-mail: nieves.bottomley@defra.gsi.gov.uk.