

**EXPLANATORY MEMORANDUM TO THE
WATER ACT 2003 (CONSEQUENTIAL AND SUPPLEMENTARY PROVISIONS)
REGULATIONS 2005**

2005 No.

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 Industry Act 1991 (WIA91), as amended by the Water Act 2003 (WA03), establishes the Consumer Council for Water and abolishes the customer service committees established under section 28(1) of the WIA91. These Regulations make consequential amendments and supplementary provision to give effect to this.

2.2 The WA03 also amends the WIA91 to extend the opportunities for competition in the supply of water by permitting a company that is the holder of a water supply licence to have access to a water undertaker's supply system to supply water to eligible premises. Part 3 of these Regulations makes consequential amendments to give effect to the new water supply licensing regime.

2.3 Additionally, the WA03 amends the WIA91 to establish the Water Services Regulation Authority, makes provision for the transfer to that Authority of the functions of the Director General of Water Services (the Director General) and abolishes the office of the Director General. These Regulations make consequential amendments and supplementary provision to give effect to this.

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

None.

4. Legislative Background

4.1 Parts 1 and 3 of the Regulations make minor changes to a wide variety of secondary legislation to take account of the change from the Customer Service Committees (WaterVoice) to the Consumer Council for Water, and from the Director General to the Water Services Regulation Authority. Equivalent changes required in primary legislation were made in the WA03, principally in Schedule 7.

4.2 Parts 1 and 3 of the Regulations also deal with such references in the water and sewerage undertakers' conditions of appointment. Under the WIA91, changes to the conditions of appointment must be agreed between the Director General and each undertaker or, in default of agreement, can only be made following a reference to the Competition Commission. To save that process, the Regulations provide for references in the conditions of appointment to be interpreted as if they were references to the new bodies.

4.3 The new water supply licensing provisions in the WIA91 provide 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 for the purpose of supplying water to customers' eligible premises. Part 2 of the Regulations makes the necessary changes to one Act and to secondary legislation to give effect to this. Equivalent changes in the WIA91 and the other main water Acts were made in the WA03, principally in Schedule 8.

4.4 The Water (Meters) Regulations 1988 govern the installation and testing of the accuracy of meters used by undertakers to calculate charges. The effect of the consequential amendments is to take licensees outside this regime. The 1988 Regulations will continue to apply as before undertakers' to ordinary customers.

4.5 The Water Supply and Sewerage Services (Customer Service Standards) Regulations 1989 prescribe minimum standards for certain aspects of the statutory service provided to customers by water and sewerage undertakers. Failure to comply attracts a payments to the relevant customer. The amendment to the 1989 Regulations disapplies this regime in respect of licensees and their customers in so far as they are supplied by water undertakers. It continues to apply to them in so far as they are supplied by sewerage undertakers.

4.6 The Food Safety Act 1990 prescribes standards of hygiene that must be met when offering food, including drink, for sale. The 1990 Act already includes an exclusion from its provisions in respect of water supplied by water undertakers, since such supplies are already subject to specific quality standards provided for under water legislation. The Regulations amend the 1990 Act to extend this exclusion to water supplied by licensees, whose water supplies will be subject to the same quality requirements as water undertakers.

4.7 The Water Supply (Water Fittings) Regulations 1999 replaced previous Water Byelaws and make provision for preventing contamination, waste, misuse, undue consumption and erroneous measurement of water supplied by water undertakers. They impose general requirements on the specification and installation of water fittings within premises. The 1999 Regulations apply to water supplies provided by water undertakers in England and Wales and the consequential amendments ensure their continued application where water supplies are made by licensees.

4.8 The Drinking Water (Undertakings) (England and Wales) Regulations 2000 specify the requirements which must be satisfied before an undertaking can be accepted by a relevant enforcement authority in respect of breaches of drinking water standards. The relevant authority may accept an undertaking which specifies a programme of work to restore wholesome water supplies. The Regulations amend the 2000 Regulations to make provision for the National Assembly for Wales to be the relevant enforcement authority for licensees using the supply systems of water undertakers wholly or mainly in Wales.

4.9 The Water Supply (Water Quality) Regulations 2000 and 2001 prescribe the standards for wholesomeness and monitoring requirements for water supplies provided by water undertakers in England and Wales respectively. The consequential amendments ensure that the 2000 and 2001 Regulations apply to supplies of water made by licensees and where licensees introduce water into water undertakers' supply systems.

5. Extent

Each provision in these Regulations has the same extent as the enactment being amended or repealed. In most cases, the provisions extend to England and Wales although in some cases they extend to Great Britain. The application of some of the provisions is limited to England or Wales or to water undertakers or licensees in England or Wales.

6. European Convention on Human Rights

The Minister of State for Climate Change and the Environment, Mr Elliot Morley, has made the following statement regarding Human Rights:

“In my view the provisions of the Water Act 2003 (Consequential and Supplementary Provisions) Regulations 2005 are compatible with the Convention rights.”

7. Policy background

7.1 The establishment of the Consumer Council for Water and the Water Services Regulation Authority is part of a programme of measures introduced by WA03 which modernises the regulatory arrangements for the water and sewerage industries. The new regulatory arrangements reflect those which apply in the gas and electricity sectors.

7.2 The new water supply licensing provisions were developed in the light of the responses received by Defra and the Welsh Assembly Government to their joint public consultation on ‘Extending Opportunities for Competition in the Water Industry in England and Wales’ (July 2002). 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 The Government believes that existing legislation which governs the relationship between water undertakers and their customers (the Water (Meters) Regulations 1988 and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 1989) should not apply between water undertakers and licensees. Water undertakers and licensees, as businesses, should be free to negotiate the levels of service required in bi-lateral access agreements.

7.4 The amendments to the Food Safety Act 1990 ensure that there is a level playing field for the quality standards which apply to water undertakers and licensees.

7.5 The amendments to the Water Supply (Water Fittings) Regulations 1999, the Drinking Water (Undertakings) (England and Wales) Regulations 2000 and the Water Supply (Water Quality) Regulations 2000 and 2001 ensure that the relevant quality standards continue to apply whether water is supplied by water undertakers or licensees. This is required to safeguard the quality of public water supplies. The amendments are consistent with existing devolution arrangements.

8. Impact

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 provisions to which the consequential amendments and supplementary provisions in these Regulations relate.

9. Contact

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