

EXPLANATORY MEMORANDUM TO
THE WATER AND SEWERAGE UNDERTAKERS (INSET APPOINTMENTS)
REGULATIONS 2005

2005 No. 268

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Water Industry Act 1991 provides for a company to be appointed as the new water or sewerage undertaker for particular premises where the volume of water supplied is above a certain threshold. These regulations lower the threshold from 100 to 50 megalitres per annum for premises in the area of incumbent undertakers whose areas are not wholly or mainly in Wales.
 - 2.2 As a consequence of this, these Regulations must also lower the threshold at which certain pipes are deemed to be “water mains” for the purposes of certain powers enjoyed by water undertakers to lay pipes in streets.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The instrument is being made to give effect to a commitment given by the Government during the preparatory stages of the Water Act 2003.
 - 4.2 The Competition and Service (Utilities) Act 1992 amended the Water Industry Act 1991 to extend the opportunities for competition in the water industry in England and Wales by allowing companies to become the new water or sewerage undertaker for premises supplied with a volume of water above a prescribed threshold. These are commonly known as “inset appointments”. The initial threshold was set at 250 megalitres per annum. The Water and Sewerage Undertakers (Inset Appointments) Regulations 2000 (SI 2000/1842) lowered the threshold to 100 megalitres per annum for premises in the area of incumbent undertakers whose areas are not wholly or mainly in Wales.
 - 4.3 This instrument lowers the threshold again from 100 to 50 megalitres per annum for premises in the area of incumbent undertakers whose areas are not wholly or mainly in Wales. As a consequential change, this instrument must also lower the relevant threshold at which certain pipes are deemed to be “water mains” for the purposes of certain powers enjoyed by water undertakers to lay pipes in streets.
 - 4.4 The National Assembly for Wales has devolved powers to set the threshold for premises in the area of incumbent undertakers whose areas are wholly or mainly in Wales.

5. Extent

- 5.1 This instrument extends to England & Wales but applies only in respect of premises in the area of incumbent undertakers whose areas are not wholly or mainly in Wales.

6. European Convention on Human Rights

- 6.1 The Minister of State (Environment and Agri-Environment), Mr Elliot Morley, has made the following statement regarding Human Rights:

“In my view the provisions of the Water and Sewerage Undertakers (Inset Appointments) Regulations 2005 are compatible with the Convention rights.”

7. Policy background

- 7.1 The consultation document “Extending Opportunities for Competition in the Water Industry in England and Wales” published in July 2002 consulted on lowering the threshold to 50 megalitres per annum for premises in the area of incumbent undertakers whose areas are not wholly or mainly in Wales. This was in line with the proposals for the threshold for the new regime for water supply by licensed water suppliers using water undertakers’ networks. The new water supply licensing regime was included in the amendments to the Water Industry Act 1991 which were made by the Water Act 2003. It is expected that the new water supply licensing regime will come into force in Autumn 2005.

- 7.2 Lowering the threshold for inset appointments together with the new water supply licensing regime will mean that about 2,300 commercial customers who collectively spend around £210 million each year on water will be able to select their water supplier. These changes will increase the potential for competition and greater efficiency in the water industry. These changes are set within the Government’s wider objectives for the water industry which are:

- to protect public health, and ensure that the industry continues to deliver a safe and secure water supply to all;
- to protect and improve the environment;
- to meet the Government’s social goals; and
- to safeguard services to all customers.

- 7.3 Although few responses referred to the specific proposal to lower the inset appointment threshold in the 2002 consultation document, the majority of those who did were supportive of the proposed increase in the scope of competition that the lower threshold represented.

8. Impact

A Regulatory Impact Assessment (“RIA”) has not been prepared for this instrument as the assessment was included in the RIA prepared for the provisions of the Water Act 2003 which introduced the new water supply licensing regime.

9. Contact

Nieves Bottomley at the Department for Environment, Food and Rural Affairs (Tel: 020 7082 8337 or e-mail: Nieves.Bottomley@defra.gsi.gov.uk) can answer any queries regarding the instrument.