

EXPLANATORY MEMORANDUM TO
THE WATER QUALITY AND SUPPLY (FEES) ORDER 2016
2016 No. 303

1. Introduction

- 1.1 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. Purpose of the instrument

- 2.1 The instrument sets out the fees that the Chief Inspector of Drinking Water may charge relevant water suppliers for the exercise of functions performed by an inspector appointed under section 86 of the Water Industry Act 1991. These functions include: checking water sampling and analysis and water supply management arrangements; investigating events, incidents, emergencies or other matters arising from the quality or quantity of water; checking the handling and reporting of consumer complaints about water quality; and checking that water companies have provided the necessary information to the Secretary of State in relation to any of the former activities. This instrument revokes the existing fees order made under the Public Bodies Act 2011.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 This instrument revokes and replaces the Public Bodies (Water Supply and Water Quality Fees) Order 2013 (S.I. 2013/277) (“the 2013 Order”). The 2013 Order was made under sections 4(1) and 6(1) of, and Schedule 4 to, the Public Bodies Act 2011 (“the 2011 Act”). These powers are subject to a 5 year sunset clause as set out in section 12 of the 2011 Act. Thus, the order making powers under the 2011 Act as they apply to functions of the Chief Inspector lapse on 14 February 2017. For this reason, new order making powers were included in section 40(1) of the Water Act 2014 which inserts section 86ZA in the Water Industry Act 1991. This provides express order-making powers to the Secretary of State to confer powers on the Chief Inspector of Drinking Water to charge fees for the exercise of a function by an inspector appointed under section 86 of the Water Industry Act 1991 and to determine their amount. Similar order-making powers are conferred on the Welsh Ministers. This is the first time that this power has been used. Section 40 (2) of the Water Act 2014 provides for the prospective repeal of the relevant provisions in the 2011 Act.

The repeal of the relevant entry in Schedule 4 to the 2011 Act will be commenced once this instrument is in force.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 This instrument applies primarily in England but also applies to relevant water suppliers where the water undertaker's area is mainly in England but partly in Wales.
- 5.3 Wales has its own fees order that applies to relevant water suppliers whose areas are wholly or mainly in Wales (the Public Bodies (Water Supply and Water Quality) (Inspection Fees) Order 2012 (SI 2012/3101). The Welsh order is not subject to the same 5 year sunset clause referred to in paragraph 4.1 as it is made under different powers in the 2011 Act.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 A new Fees Order is being introduced to replace the Public Bodies (Water Supply and Water Quality Fees) Order 2013. This sets out the fees that the Drinking Water Inspectorate may charge water companies for carrying out certain functions as set out in the Water Industry Act 1991. It uses the power conferred on the Secretary of State by section 40(1) of the Water Act 2014 through the insertion of Section 86ZA in the Water Industry Act 1991.
- 7.2 The Drinking Water Inspectorate (DWI) was established in 1990 as the drinking water quality regulator for the privatised water industry in England and Wales. The Secretary of State and the Welsh Ministers have responsibility under the Water Industry Act 1991 for regulating the quality of public drinking water supplies in England and Wales. The Chief Inspector and other inspectors are appointed under section 86 of the Water Industry Act 1991 to carry out assessment and enforcement functions relating to drinking water quality. The Chief Inspector and other inspectors under section 86 are known collectively as the Drinking Water Inspectorate. The DWI has no legal personality and does not exist as a corporate entity. The DWI carries out a variety of work. Some is carried out in their statutory role as inspectors (their regulatory functions), whilst other work is carried out on behalf of Ministers in those individuals' capacity as Crown servants (policy functions).
- 7.3 The Public Bodies Act 2011 (section 4 and Schedule 4) made provision for orders to be made effectively allowing the DWI to charge water companies for the various regulatory functions carried out by them. The 2013 Order was made under these powers. Under the 2013 Order, the rates to be applied to the determination of the fees were set administratively by the Chief Inspector, subject to approval and publication by the Secretary of State and the Order included a duty on the Secretary of State to review the rates annually.
- 7.4 DWI began charging water companies in 2013/14 and fees were increased in 2015/16 to include overheads, consistent with full cost recovery. The fees are spread over 27

water companies though only the 24 companies wholly in England are affected by this Order. Under this instrument, the rates to be applied to the determination of the fees to be charged by the Chief Inspector are set out in the Schedule. The fees as set out in the Order are slightly lower than 2015/16 fees, as the costs of delivering the service have decreased as a result of the involvement of lower grade staff to help with auditing event and complaint work. DWI currently recovers about £2.9m per annum. The Order will come into force on 1 April in order to align with Defra's financial year and the annual charging period of the fees.

Consolidation

7.5 N/A

8. Consultation outcome

8.1 A public consultation has not been carried out on the Order as there is no policy change. The Order simply continues the practice whereby the Chief Inspector can charge for certain activities. The proposal for the charging scheme was originally included in the formal consultation on the Floods and Water Management Bill in 2009 with a further informal consultation in 2011.

9. Guidance

9.1 Current published guidance exists as this instrument maintains an existing charging regime. Once this instrument is laid, the DWI will write to water companies to inform them of the legislative changes and remind them of the existing guidance.

10. Impact

10.1 The impact on business, charities or voluntary bodies has previously been estimated at £1.4m per annum at 2009 prices.

10.2 No additional significant impact on the private, voluntary or public sectors is therefore foreseen as a result of this Order.

10.3 An Impact Assessment has not been prepared for this instrument as it merely transposes existing charging provisions from the previous 2013 Order. This was subject to a full impact assessment. The fees proposed under this Order are not significantly different from those in force under the 2013 Order.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses. However, there are three elements to the Chief Inspector fees. The first and normally largest part relates to the number of samples and results submitted and checked. This will be a smaller number for smaller companies thereby ensuring the fees are proportionate to the size of business. The second element is fees for events and complaints. For a smaller company this may well be zero or very small. The final element is fees for audits. These are risk based so in general, smaller companies will receive fewer audits.

12. Monitoring & review

- 12.1 Article 5 of the instrument requires the Secretary of State to carry out a review of the Order and to produce a report before 1 April 2021, and subsequently at intervals not exceeding 5 years. This is in line with the duties in section 28 and 30 of the Small Business Enterprise and Employment Act 2015. The intention is to review the fees on an annual basis. Any changes will require a new order.

13. Contact

- 13.1 Alison Maydom at the Department for Environment, Food and Rural Affairs.
Telephone: 020 8026 2699 or email: alison.maydom@defra.gsi.gov.uk can answer any queries regarding the instrument.