
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for water and sewerage undertakers whose area is wholly or mainly in England to apply to the Secretary of State for permission to exit the non-household retail market for that area.

Part 1 of these Regulations provides for relevant definitions and specifies certain functions for the purposes of section 42(4) of the Water Act 2014.

Part 2 of the Regulations concerns the making and content of exit applications and their determination by the Secretary of State. Applications must identify the acquiring licensees, the premises that are to be transferred to those licensees and the exit date. Notice of an exit application must be published on the exiting undertaker's website.

Part 3 of the Regulations concerns the transfer of property, rights and liabilities to the acquiring licensees. A transfer scheme must be used for special agreements but schemes are otherwise optional. The Water Services Regulation Authority (known as Ofwat) has a power to determine whether premises and customers in a retail exit area have been transferred to acquiring licensees.

Part 4 of the Regulations concerns the changes that will be made to the statutory duties of the exited undertaker and acquiring licensee following an exit. An undertaker will be prohibited from supplying retail services in respect of water supply or sewerage to non-household premises in an exit area.

Ofwat will be able to modify the conditions of appointment of the exiting undertaker in consequence of the exit.

Acquiring licensees will have to continue to provide retail market services in a retail exit area following the exit. Ofwat will be able to modify the licence conditions of the acquiring licensees in consequence of the exit. Licensees providing retail market services in an exit area will be required to act in accordance with a published scheme of terms and conditions (the "deemed contract"), unless customers have agreed different terms with the licensee. Licensees' deemed contracts will have to comply with relevant provisions in a code produced by Ofwat.

Part 5 of the Regulations outlines how customers can be assured of finding a supplier of water retail services in an area where the undertaker has exited the retail market. Chapter 1 provides for transferred customers who have switched away from the acquiring licensee's deemed contract to retain the right to apply to Ofwat to be allocated to an alternative licensee and placed on their deemed contract. Ofwat will then direct a licensee from a group of participating licensees (also known as the 'supplier of first resort' pool) to supply the customer on the deemed contract.

Chapter 2 sets out the process by which new customers will be allocated a retail supplier if they do not identify one for themselves. The relevant undertaker in an exit area must inform a new customer that the undertaker has exited the retail market and how to identify a licensee to provide those services. Where the customer fails to contract with a licensee, the undertaker must notify Ofwat which must direct a licensee from a list of eligible licensees to provide the retail services.

Chapter 3 makes provision requiring Ofwat to maintain a list of eligible water supply licensees to provide retail services for each retail exit area. The list must comprise the acquiring licensees for that exit area and any other licensee that has applied to be included. Exceptions apply for licensees that have specialised business models.

Chapter 4 requires Ofwat to publish guidance on the exercise of its powers to direct a licensee to provide services and to maintain a list of eligible licensees. Ofwat is required to specify by

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order the terms and conditions that, in the absence of an express agreement, are to apply to the contractual relationship between the undertaker and any licensee directed to provide retail services under Chapter 2.

Part 6 of the Regulations makes corresponding provision for the identification of a provider of sewerage services in a retail exit area.

Part 7 of the Regulations makes provision for review of the Regulations by the Government.

Schedule 1 to the Regulations makes further provision in respect of the transfer schemes mentioned in Part 3. A transfer scheme must be approved by Ofwat and may provide for the transfer of property, rights and liabilities, with or without payment by the acquiring licensee. Schedule 2 makes consequential amendments to the Water Industry Act 1991.

A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary sector and the public sector is available from the Water Services Team, the Department for Environment, Food and Rural Affairs, Area 3D, Nobel House, 17 Smith Square, London SW1P 3JR, and is published alongside the Water Act 2014 at www.legislation.gov.uk.