

**EXPLANATORY MEMORANDUM TO**  
**THE SEWERAGE SERVICES (EXCEPTION FROM SEWERAGE SYSTEM**  
**PROHIBITION) (ENGLAND) REGULATIONS 2017**

**2017 No. 244**

**1. Introduction**

- 1.1 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. Purpose of the instrument**

- 2.1 The purpose of the instrument is to provide a statutory exemption from a prohibition on the use of a sewerage system for sewerage undertakers that rely on main connection agreements with other sewerage undertakers to provide services to their customers. Main connection agreements are arrangements whereby a sewerage undertaker agrees to transport, treat and dispose of wastewater on behalf of another sewerage undertaker.
- 2.2 In the absence of this instrument the sewerage undertaker relying on a main connection agreement in order to provide sewerage services would be prohibited from providing retail services to its customers and could become subject to criminal proceedings under the Water Industry Act 1991 (the 1991 Act). Retail services in this context includes services such as billing, meter reading and other customer-facing services connected to the use of the sewerage system of a sewerage undertaker.

**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 Section 117P of the 1991 Act, as inserted by the Water Act 2014 (the 2014 Act), prohibits a person from using the sewerage system of a sewerage undertaker whose area is wholly or mainly in England in order to provide sewerage services to the premises of their customers, their own premises and those of their associates. This prohibition does not apply where a sewerage undertaker is using their own sewerage system, the use of the sewerage system is made by a sewerage licensee in accordance with its licence or in such further circumstances as the Secretary of State may specify in regulations made under section 117P(4) of the 1991 Act.
- 4.2 Section 7 of the 1991 Act allows a company (a new appointee) to replace the incumbent sewerage undertaker as the undertaker for a previously unserved site in the

incumbent's area of appointment (e.g. new housing developments on greenfield sites). It is also possible for one incumbent sewerage undertaker to make a voluntary agreement with another to transport, treat and dispose of wastewater on behalf of its customers. The arrangements for sewerage undertakers to provide these wholesale sewerage services to new appointees and other incumbents are known as "main connection agreements" (see section 110A(11) of the 1991 Act).

- 4.3 The 2014 Act includes provisions that will make it easier for main connection agreements to be made. In particular sections 110A and 110B of the 1991 Act (as amended and inserted respectively by the 2014 Act) provide powers for Ofwat to intervene, on the application of one of the parties, where the parties are unable to finalise, vary or revoke a main connection agreement.
- 4.4 These Regulations provide that the prohibition on the use of a sewerage system does not apply where sewerage services are being provided under a main connection agreement, whether the agreement was made before or after the amendments introduced by the 2014 Act came into force.

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England and Wales.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

- 7.1 The 2014 Act will reform the water industry to help address future challenges arising from a growing population, increasing customer expectations and changing climate. These reforms include the introduction of retail competition in sewerage services for non-household customers. All businesses, charities and public bodies in the areas of sewerage undertakers wholly or mainly in England will be able to switch their sewerage service provider for the first time from April 2017. This extends the scope of an existing retail regime that currently only allows large users of water to switch their water supplier.
- 7.2 The 2014 Act also reforms an existing regime that allows a company (a new appointee) to replace an incumbent undertaker for a specific site within an incumbent sewerage undertaker's area of appointment. A new appointee provides the sewers and drains for the new premises and is appointed by Ofwat to be the sewerage undertaker for the developed site. The new appointee may make a main connection agreement with the incumbent sewerage undertaker to use its sewerage system to transport, treat and dispose of wastewater from the new appointee's sewerage system. In this case the new appointee's sewerage system will consist of the sewers and drains connected to individual premises in the new appointee's area. The incumbent's sewerage system will consist of the sewers, storage, treatment works and other facilities needed to dispose of the wastewater from the new appointee's sewerage system. Incumbents may also make similar agreements to dispose of each other's wastewater.
- 7.3 Any person wishing to provide retail sewerage services in the competitive market must apply to Ofwat for a sewerage licence. In common with other utility regimes

legislation makes it a criminal offence for any person to use an incumbent's network to provide retail services to its own customers unless that person holds a relevant licence or is permitted to access those networks through primary or secondary legislation. This not only disincentivises unlicensed businesses from attempting to make unregulated retail agreements with customers; it also prevents incumbents from providing preferential access to their networks in order to provide unlicensed operators with a competitive advantage over those holding licences.

- 7.4 The 2014 Act therefore prohibits the use of a sewerage undertaker's sewerage system to provide retail services to premises (including household premises) unless the person providing the services is the sewerage undertaker or a sewerage licensee acting in accordance with its licence. A sewerage undertaker (including a new appointee) is therefore prohibited from providing retail services if it is wholly or partially using the sewerage system of another sewerage undertaker in order to provide those services.
- 7.5 The 1991 Act allows the Secretary of State to introduce blanket exemptions by regulations under section 117P(4) or to allow individual exemptions through orders made under section 117R (e.g. at the request of operators that could not continue to provide certain services because of the prohibition).
- 7.6 The provisions in sections 117P and 117R of the 1991 Act are broadly based on those in section 66I and 66K of that Act. This prohibits unlicensed businesses from providing retail water supply services using a water undertaker's supply system unless they are the water undertaker or a water supply licensee operating in accordance with its licence. Regulation 3(1)(a) of The Water Supply (Exceptions from Supply System Prohibition) Regulations 2005 includes a blanket exemption to provide retail services for new appointees and water undertakers that receive bulk water supplies from the supply systems of other water undertakers.
- 7.7 The 2014 Act provides for the continuation of the main connection regime alongside the new sewerage licensing regime. It is therefore appropriate for those relying on main connections agreements to be subject to a blanket exemption rather than having to seek an individual exemption themselves under section 117R of the 1991 Act.

## **8. Consultation outcome**

- 8.1 In December 2015 the Government consulted stakeholders on introducing a blanket main connection exemption in the *Water supply and sewerage licensing regime: Standard licence conditions and the approach to secondary legislation*<sup>1</sup> consultation document.
- 8.2 All those that responded<sup>2</sup> agreed that sewerage undertakers providing services through main connection agreements should not be prohibited from providing retail services to customers, etc. No other sewerage agreements or arrangements were identified for a blanket exemption.

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<sup>1</sup> [https://consult.defra.gov.uk/water/water-supply-and-sewerage-licensing-regime/supporting\\_documents/WSSL%20Licensing%20Consultation%20Document.pdf](https://consult.defra.gov.uk/water/water-supply-and-sewerage-licensing-regime/supporting_documents/WSSL%20Licensing%20Consultation%20Document.pdf)

<sup>2</sup> A summary of responses can be found at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/508331/wssl-consult-sum-resp.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508331/wssl-consult-sum-resp.pdf).

## **9. Guidance**

9.1 There is no guidance to accompany these regulations.

## **10. Impact**

10.1 There is no significant impact on business, charities or voluntary bodies. The regulations will have a direct positive impact on businesses that are sewerage undertakers relying on main connection agreements to provide services to their customers by enabling them to continue providing retail sewerage services to their customers. Introducing a blanket exemption for these businesses means that they will not have to apply for individual exemptions under section 117R of the 1991 Act. Nor will they have to make arrangements with a sewerage licensee or the incumbent sewerage undertaker to serve customers in the event that an exemption is not granted through section 117R.

10.2 There is no significant impact on public bodies other than that Defra will not have to handle as many requests for individual exemptions from relevant sewerage undertakers under section 117R of the 1991 Act.

10.3 An Impact Assessment has not been prepared for this instrument but one was produced covering retail reforms in advance of the Water Bill entering Parliament in June 2013 and updated and re-published following Royal Assent in May 2014. All the impact assessments are available on [legislation.gov.uk](http://legislation.gov.uk) alongside the 2014 Act.

## **11. Regulating small business**

11.1 The legislation applies to activities that are undertaken by small businesses (employing up to 50 people) in so much as they are relevant sewerage undertakers granted appointments by Ofwat.

11.2 No steps are necessary to minimise the impact of the requirements on small businesses. These regulations safeguard the retail businesses of relevant sewerage undertakers regardless of the size of their businesses.

## **12. Monitoring & review**

12.1 The provisions of the 2014 Act and, by extension, the provisions of this instrument, will be subject to the normal post-legislative review three to five years after Royal Assent.

## **13. Contact**

13.1 David Jones at the Department for Environment, Food and Rural Affairs Telephone: 020 802 63003 or email: [david.jones@defra.gsi.gov.uk](mailto:david.jones@defra.gsi.gov.uk) can answer any queries regarding the instrument.