

EXPLANATORY MEMORANDUM TO
THE WATER SUPPLY AND SEWERAGE SERVICES (CUSTOMER SERVICE
STANDARDS) (AMENDMENT) REGULATIONS 2017

2017 No. 246

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 this instrument is to amend the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 (“the 2008 Regulations”) to apply customer service standards to water supply licensees and sewerage licensees (“licensees”) operating in the areas of water and sewerage undertakers that are wholly or mainly in England (“undertakers”). These Regulations also apply the requirements in the 2008 Regulations for payments to be made to customers when the prescribed standards are not met or when things go wrong (e.g. when a customer experiences sewer flooding).

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 The Water Act 2014 (“the 2014 Act”) introduced a number of measures to reform the competitive markets in the water sector in England and Wales including reforming the water supply licensing regime and the introduction of a sewerage licensing regime. The holders of water supply and sewerage licenses will be able to provide retail services to eligible non-household customers that use the water supply systems of water undertakers and the sewerage systems of sewerage undertakers when the new retail market opens in April 2017. The 2014 Act also provides the opportunity for undertakers wholly or mainly in England to exit the non-household retail market which means they would not be required to provide retail services to their non-household customers, but will retain their wholesale responsibilities. Exits are provided for in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.
- 4.2 Sections 38 and 39 of the Water Industry Act (“the 1991 Act”) permit the Secretary of State and Welsh Ministers to make regulations setting out customer service standards that must be met by water undertakers and sections 95 and 96 make similar provision

in relation to sewerage undertakers. Sections 38ZA and 39ZA, inserted by the 2014 Act, make similar provision in relation to water supply licensees and sewerage licensees respectively. Regulations may provide for payments to be made to customers for failure to meet the prescribed standards.

- 4.1 The customer service standards set out in Part 2 of the 2008 Regulations, as amended by these Regulations, replicate the current service standards, modified to reflect the division of responsibilities between providers of retail services (licensees and undertakers) and undertakers providing wholesale services.
- 4.2 Part 1 of the 2008 Regulations, as amended by these Regulations, will continue to apply the existing customer service standards to water and sewerage undertakers that are wholly or mainly in Wales. Water supply licensees will be providing services to customers that are large-users of water in those areas, but the Welsh Ministers will not be applying the 2008 Regulations to those licensees for the time being.
- 4.3 The application of the standards and payments in the 2008 Regulations to licensees by this instrument is based on an application made by the Water Services Regulation Authority (“Ofwat”) to the Secretary of State and Welsh Ministers under the above provisions in the 1991 Act. The 1991 Act allows ministers to modify Ofwat’s application following the issuing of a notice to those affected by the proposed modification. In accordance with those provisions, these Regulations modify Ofwat’s application to provide that in situations where a breach of the customer service standards has occurred through the fault of a wholesaler then the licensee, and/or their associates, is entitled to the relevant payment.

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 water supply and sewerage services for non-household customers. All businesses, charities and public bodies in the areas of undertakers wholly or mainly in England will be able to switch their water supply and 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 Ofwat, under provision in the 1991 Act, carried out research and conducted a consultation¹ on standards and payments that should be introduced for licensees serving non-household customers. It concluded that the same standards and payments currently applicable to undertakers and their non-household customers should be

¹ <http://www.ofwat.gov.uk/wp-content/uploads/2015/09/Customer-protection-in-a-retail-market.pdf>

applied to licensees and their customers, except where a licensee holds a self-supply licence which only permits the holder to serve its own premises and those of its associates (i.e. subsidiaries, parent companies, etc). The objective of the application was to make recommendations to help deliver a level playing field between licensees and incumbent undertakers and also to ensure that customers did not become worse off if they switched to a licensee or were transferred to one as part of an undertaker's exit. The objective of excluding self-supply licensees was to reduce burdens on those licensees so that they would not have to meet standards and make payments for breaches involving their own premises, etc.

- 7.3 The Secretary of State accepted the recommendations in Ofwat's application². However, it was modified so that an undertaker acting as a wholesaler for a self-supply licensee and their associates would be subject to the standards applicable to other undertakers acting as wholesalers (e.g. if the self-supply licensee or their associates experience sewer flooding or a loss of water pressure), but not have to meet the same standards relating to the licensee of responding to account queries and requests to change payment arrangements.

8. Consultation outcome

- 8.1 As required by the 1991 Act, Ofwat consulted stakeholders and those that could be affected by its recommendations before making its application to ministers. Nineteen out of the twenty written responses agreed with Ofwat's proposal that the 2008 Regulations should apply to licensees as well as undertakers.
- 8.2 The department issued a notice to stakeholders indicating that it would modify Ofwat's recommendation so that undertakers acting as wholesalers for self-supply licensees and their associates would be subject to the standards applicable to other undertakers acting as a wholesaler. Three representations were received in response to the notice: two supported the proposal and one provided no comments on the proposal.

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 because they will continue to be protected by the 2008 Regulations regardless of whoever serves them in the reformed retail market. Licensees operating in undertakers' areas that are wholly or mainly in England will incur costs of £20 or £50 for each breach. Ofwat estimated a net present value (NPV) of £0.75 million for the water sector. Ofwat's impact assessment on extending the 2008 Regulations to licensees is available on its website on ofwat.gov.uk.
- 10.2 An Impact Assessment has not been prepared by the department for this instrument. 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

² <http://www.ofwat.gov.uk/publication/customer-protection-retail-market-proposal-secretary-state-welsh-ministers-regulations-connection-standards-performance-supply-water-provision/>

2014. All the impact assessments are available on 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 undertakers or licensees.
- 11.2 Business customers of all sizes will continue to benefit from the current standards regardless of whether they stay with their undertaker or start being served by a licensee. They will also continue to receive payments if the prescribed standards are not met or when things go wrong.
- 11.3 No steps have been taken to minimise the impact of the requirements on small businesses. An exemption for small licensees and undertakers providing retail services would fail to protect customers. Applying the same standards and payments will help promote the trust and confidence required for a non-household customer to switch to a licensee (since they can be assured of a minimum level of service) without having to closely examine the licensee's terms and conditions.

12. Monitoring & review

- 12.1 The Secretary of State must review Part 2 of the amended Regulations after five years and publish a report setting out the extent to which the Regulations have met their intended objectives and whether those objectives are still appropriate for legislation, and if so the extent to which they could be achieved with less regulation. Subsequent reports must be published at intervals not exceeding five years.

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 can answer any queries regarding the instrument.