STATUTORY INSTRUMENTS

2016 No. 744

WATER INDUSTRY, ENGLAND AND WALES

The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016

Made - - - -	*14th July 2016*
Coming into force - -	*3rd October 2016*

The Secretary of State, in exercise of the powers conferred by sections 42(1), (2), (3) and (5), 43(1)(b), (d), (e), (f) and (g), (3)(a), (4), (7) and (8), 44(1)(a), (3)(a) and (5)(a), 45, 46(3), (5), (7) and (8), 47(1), (2) and (3), 49 and 51(1), (3), (4) and (5) of the Water Act 2014(**1**), makes these Regulations.

The Secretary of State has, in accordance with section 53(1) of the Water Act 2014, consulted—

(a) the Welsh Ministers;

(b) the WSRA(**2**);

(c) the CMA;

(d) the Consumer Council for Water;

(e) relevant undertakers whose areas are wholly or mainly in England;

(f) licensed water suppliers(**3**); and

(g) persons whom the Secretary of State considers to represent the interests of investors in the water industry.

In accordance with section 53(3) of the Water Act 2014, a draft of this instrument has been laid before and approved by resolution of each House of Parliament.

(**1**) 2014 c.21.
(**2**) The WSRA is defined in section 52(1) of the Water Act 2014 as the Water Services Regulation Authority (known as Ofwat).
(**3**) Section 53(1) of the Water Act 2014 requires the Secretary of State to consult "water supply licensees" before making these Regulations. However, pending prospective amendment by the Water Act 2014 from a date to be appointed, section 17B(9) of the 1991 Act currently provides that references to a licensed water supplier are references to a company which is the holder of a water supply licence.

PART 1

Citation, commencement and interpretation etc.

Citation and commencement

1.—(1) These Regulations may be cited as the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

(2) These Regulations come into force on 3rd October 2016.

Interpretation

2.—(1) In these Regulations—

"the 1991 Act" means the Water Industry Act 1991(**4**);

"acquiring licensee" has the meaning given by regulation 6;

"eligible sewerage licensee", except in regulation 11, means a sewerage licensee whose name appears in the relevant list of eligible sewerage licensees maintained under regulation 58;

"eligible water supply licensee", except in regulation 11, means a water supply licensee whose name appears in the relevant list of eligible water supply licensees maintained under regulation 43;

"exit application" means an application under regulation 4;

"exit date" has the meaning given by regulation 8;

"local statutory provision" means—

(a) a provision of a local Act (including an Act confirming a provisional order);

(b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;

(c) a provision of an instrument made under any provision falling within paragraph (a) or (b); or

(d) a provision of any other instrument which is in the nature of a local enactment;

"relevant undertaker" means a water undertaker or sewerage undertaker;

"retail authorisation" has the meaning given—

(a) for a water supply licence, in paragraph 3 of Schedule 2A to the 1991 Act(**5**);

(b) for a sewerage licence, in paragraph 1 of Schedule 2B to the 1991 Act(**6**);

"sewerage services request" has the meaning given by regulation 51(2);

"sewerage system", in relation to a sewerage undertaker, has the meaning given by section 17BA(7) of the 1991 Act(**7**);

"supply system", in relation to a water undertaker, has the meaning given by section 17B(4A) of the 1991 Act(**8**);

"transferred premises" has the meaning given by regulation 7;

(**4**) 1991 c. 56.
(**5**) Schedule 2A was inserted by Schedule 1 to the Water Act 2014.
(**6**) Schedule 2B was inserted by Schedule 3 to the Water Act 2014.
(**7**) Section 17BA(7) was inserted by section 4(1) of the Water Act 2014.
(**8**) Section 17B(4A) is prospectively substituted by section 2(2) of the Water Act 2014 from a date to be appointed.

"transferred customer", in relation to an acquiring licensee, means a customer whose premises are transferred premises in relation to the licensee;

"transfer scheme" has the meaning given by paragraph 1(a) of Schedule 1;

"water supply request" has the meaning given by regulation 36(2).

(2) For the purposes of these Regulations—

(a) premises which are outside the area of a water undertaker that is withdrawing, or has withdrawn, from the non-household retail market are to be treated as being within the retail exit area(**9**) if they are supplied with water using the undertaker's supply system;

(b) premises which are within the area of a water undertaker that is withdrawing, or has withdrawn, from the non-household retail market are to be treated as being outside the retail exit area if they are supplied with water using another undertaker's supply system; and

(c) any pipes of a water undertaker which are used for the purpose of supplying premises as mentioned in sub-paragraph (a) or (b) are to be treated as being part of that undertaker's supply system (if they would not otherwise be part of it).

(3) For the purposes of these Regulations—

(a) premises which are outside the area of a sewerage undertaker that is withdrawing, or has withdrawn, from the non-household retail market are to be treated as being within the retail exit area if they are provided with sewerage services using the undertaker's sewerage system;

(b) premises which are within the area of a sewerage undertaker that is withdrawing, or has withdrawn, from the non-household retail market are to be treated as being outside the retail exit area if they are supplied with sewerage services using another undertaker's sewerage system; and

(c) any sewers or drains of a sewerage undertaker which are used for the purpose of serving premises as mentioned in sub-paragraph (a) or (b) are to be treated as being part of that undertaker's sewerage system (if they would not otherwise be part of it).

(4) Except where the context otherwise requires, expressions used in these Regulations have the same meaning as in the 1991 Act.

The non-household retail market

3.—(1) The function of supplying water to non-household premises is specified for the purposes of section 42(4)(a) of the Water Act 2014 (meaning of references to a water undertaker withdrawing from the non-household retail market).

(2) The function of providing sewerage services to non-household premises is specified for the purposes of section 42(4)(b) of the Water Act 2014 (meaning of references to a sewerage undertaker withdrawing from the non-household retail market).

(**9**) The definition of "retail exit area" may be found in section 52(1) of the Water Act 2014.

PART 2

Exit applications

Making and content of exit applications

Power to make an exit application

4.—(1) A relevant undertaker whose area is wholly or mainly in England may apply to the Secretary of State for permission to withdraw from the non-household retail market in relation to that area.

(2) A company that is both a water undertaker for an area wholly or mainly in England and a sewerage undertaker for an area wholly or mainly in England may make an application only if it relates to the undertaker's functions in both those capacities.

Exit application to provide reasons for wanting to exit

5. An exit application must provide the relevant undertaker's reasons for wanting to withdraw from the non-household retail market.

Exit application to identify acquiring licensees

6.—(1) An exit application must specify the eligible licensee(**10**) or licensees to which the relevant undertaker proposes to transfer a part of its undertaking.

(2) An eligible licensee may be specified in an exit application only if the licensee consents in writing.

(3) An exit application must be accompanied by a copy of that consent.

(4) An eligible licensee may be specified in an exit application even if it is a company associated with the undertaker.

(5) In these Regulations, "acquiring licensee" means an eligible licensee specified in an exit application.

Exit application to identify customers' premises

7.—(1) An exit application must identify the premises that are to be supplied with water or provided with sewerage services by an acquiring licensee instead of by the relevant undertaker.

(2) If there is more than one acquiring licensee, the exit application must identify which premises are to be supplied with water or provided with sewerage services by which licensee.

(3) The premises must be identified in a way that will include all premises which are supplied with water or provided with sewerage services by the relevant undertaker immediately before the exit date but which the undertaker will be prohibited by regulation 20 from supplying with water or providing with sewerage services on and after the exit date.

(4) In paragraph (3), the reference to premises which are supplied with water or provided with sewerage services by the relevant undertaker includes all premises in respect of which a person is liable to pay charges to the undertaker for the supply of water or provision of sewerage services.

(5) If the relevant undertaker supplies water and provides sewerage services to the same premises, a single acquiring licensee must be identified under paragraph (2) in relation to the supply of water and the provision of sewerage services to those premises.

(**10**) The definition of "eligible licensee" may be found in section 52(1) of the Water Act 2014.

(6) Premises may be identified in an exit application by specifying or describing them.

(7) In these Regulations, "transferred premises", in relation to an acquiring licensee, means premises identified in an exit application as premises to be supplied with water or provided with sewerage services by the licensee.

Exit application to specify an exit date

8.—(1) An exit application must specify the date on which the relevant undertaker proposes to withdraw from the non-household retail market in relation to its area.

(2) The exit date must not be before the end of the period of 5 months beginning with the date of the application, unless the Secretary of State has agreed to an earlier exit date.

(3) In these Regulations, "exit date", in relation to a relevant undertaker who has made an exit application, means—

(a) the date specified in the exit application, or

(b) if that date is changed under regulation 13, the date most recently notified to the Secretary of State under that regulation.

Notice of exit application and power to require further information

Notice of exit application

9.—(1) Where a relevant undertaker makes an exit application, it must publish notice of the application on its website.

(2) The relevant undertaker must also give notice of the application to—

(a) the WSRA, and

(b) the Consumer Council for Water.

(3) A notice under paragraph (1) or (2) must specify—

(a) the date of the exit application,

(b) the name of the acquiring licensee or licensees, and

(c) the exit date.

(4) A relevant undertaker that has made an exit application must comply with paragraphs (1) and (2) by the end of the period of 7 days beginning with the date of the application.

(5) A notice published on the relevant undertaker's website under paragraph (1) must not be removed until—

(a) the exit date has passed,

(b) the application is withdrawn under regulation 14, or

(c) the Secretary of State is notified under regulation 15 that the relevant undertaker or an acquiring licensee no longer wishes to proceed.

(6) A duty imposed on a relevant undertaker by this regulation is enforceable under section 18 of the 1991 Act(**11**).

(**11**) Section 18 was amended by sections 36(2) and 49(2) of, and paragraph 4 of Schedule 8 to, the Water Act 2003 (c.37). It is prospectively amended by paragraph 26 of Schedule 7 to the Water Act 2014 (c.21) from a date to be appointed.