Draft Regulations laid before Parliament under section 36G of the Water Industry Act 1991, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. 0000

WATER INDUSTRY, ENGLAND AND WALES

The Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2014

Made - - - - ***

Coming into force in accordance with regulation 1(1).

The Secretary of State makes these Regulations in the exercise of the powers conferred by sections 36A and 213(2)(d) and (dd) of the Water Industry Act 1991(**1**) in relation to infrastructure which is provided or is to be provided for the use of one or more English undertakers(**2**).

The Secretary of State has consulted as required by section 36G(2) of that Act(**3**).

A draft of these Regulations has been laid before Parliament in accordance with section 36G(1)(a) of that Act and approved by resolution of each House of Parliament.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2014 and come into force on the day after the day on which they are made.

(**1**) 1991 c. 56; section 36A was inserted by section 35(1) of the Flood and Water Management Act 2010 (c. 29). Section 213 was amended by section 56(6) of, and paragraph 28 of Schedule 1 to, the Competition and Service (Utilities) Act 1992 (c. 43) and section 35(2) of the Flood and Water Management Act 2010. There are other amendments, but none is relevant.

(**2**) See the definition of "English undertaker" in section 36E(2)(a) of the Water Industry Act 1991; section 36E was inserted by section 35(1) of the Flood and Water Management Act 2010. The powers to make Regulations in relation to infrastructure which is provided or to be provided for the use of one or more Welsh undertakers are exercisable by the Welsh Ministers. See the definition of "Welsh undertaker" in section 36E(2)(b) of the Water Industry Act 1991. The functions of the Secretary of State under section 213 of the Water Industry Act 1991 were exercisable by the National Assembly for Wales ("the Assembly") to the same extent as the powers to which that section applies were exercisable by the Assembly by virtue of article 2 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672); see the entry in Schedule 1 for the Water Industry Act 1991 as substituted by paragraph (e) of Schedule 3 to the National Assembly for Wales (Transfer of Functions) Order 2000 (S.I. 2000/253) and amended by section 100(2) of the Water Act 2003 (c. 37); there are other amendments but none is relevant. By virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32), functions conferred on the Assembly are exercisable by the Welsh Ministers. An amendment by the Flood and Water Management Act 2010 of another enactment does not prevent the continued operation of any transfer of functions by or by virtue of the Government of Wales Act 1998 (c. 38) or 2006 irrespective of whether the amendment amends an existing function or confers a new function (see section 49(6)(a) of the Flood and Water Management Act 2010).

(**3**) Section 36G was inserted by section 35(1) of the Flood and Water Management Act 2010.

(2) In these Regulations, "the 2013 Regulations" means the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013(**4**).

Amendments to the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013

2. Schedule 1 to the 2013 Regulations (application of the Water Industry Act 1991 and related provisions) is amended in accordance with regulations 3 to 5.

3.—(1) Paragraph 4 (conditions of project licences) is amended as follows.

(2) In the section 17HA of the Water Industry Act 1991 (conditions of project licences) which is set out in paragraph 4—

(a) in subsection (2)—

(i) at the end of paragraph (b), omit the word "and";

(ii) in paragraph (c), for "specified questions" to the end substitute "such questions arising under or in connection with the licence and of such other matters as are specified or are of a specified description; and"; and

(iii) after paragraph (c), insert—

"(d) provide for the reference by the Authority to the CMA, and the determination by the CMA, of such questions arising under or in connection with the licence and of such other matters, including disputes as to determinations by the Authority, as are specified or are of a specified description."; and

(b) after subsection (5) insert—

"(6) Where any question or other matter falls to be determined by the CMA in pursuance of a provision contained in a project licence held by a licensed infrastructure provider—

(a) it is the duty of the Authority, on being required to do so by that licensed infrastructure provider, to refer that question or matter to the CMA; and

(b) it is the duty of the CMA to determine any question or other matter referred by virtue of paragraph (a) in accordance with the principles which apply, by virtue of Part 1 of this Act, in relation to determinations under this Chapter by the Authority.

(7) For the purposes of subsection (6), where—

(a) the question or matter referred to the CMA concerns the review of a price control imposed on the licensed infrastructure provider; and

(b) the CMA is to decide to what extent it is reasonable to take into account in its determination costs incurred or borne by the licensed infrastructure provider in connection with the reference,

the CMA shall also have regard to the extent to which, in its view, its determination is likely to support the licensed infrastructure provider's (rather than the Authority's) claims in relation to the question or matter referred to it.

(8) Section 17K(5) and (7), and sections 17L and 17M, apply to references to the CMA under this section as they apply to references under section 17K(1).

(9) A report of the CMA on a reference under this section—

(**4**) S.I. 2013/1582.