

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT WATER AND SEWERAGE UNDERTAKERS (EXIT FROM NON-HOUSEHOLD RETAIL MARKET) (CONSEQUENTIAL PROVISION) REGULATIONS 2021

Wednesday 22 September 2021

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The Committee consisted of the following Members:

Chair: DEREK TWIGG

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| † Bailey, Shaun (<i>West Bromwich West</i>) (Con) | McDonagh, Siobhain (<i>Mitcham and Morden</i>) (Lab) |
| Barker, Paula (<i>Liverpool, Wavertree</i>) (Lab) | † Owatemi, Taiwo (<i>Coventry North West</i>) (Lab) |
| † Blake, Olivia (<i>Sheffield, Hallam</i>) (Lab) | † Pow, Rebecca (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) |
| † Cates, Miriam (<i>Penistone and Stocksbridge</i>) (Con) | † Sambrook, Gary (<i>Birmingham, Northfield</i>) (Con) |
| † Drummond, Mrs Flick (<i>Meon Valley</i>) (Con) | † Wheeler, Mrs Heather (<i>South Derbyshire</i>) (Con) |
| Eagle, Maria (<i>Garston and Halewood</i>) (Lab) | Whittome, Nadia (<i>Nottingham East</i>) (Lab) |
| † Evans, Dr Luke (<i>Bosworth</i>) (Con) | |
| Gardiner, Barry (<i>Brent North</i>) (Lab) | Yohanna Sallberg, <i>Committee Clerk</i> |
| † Griffiths, Kate (<i>Burton</i>) (Con) | |
| † Jenkinson, Mark (<i>Workington</i>) (Con) | † attended the Committee |
| † Largan, Robert (<i>High Peak</i>) (Con) | |

Fourth Delegated Legislation Committee

Wednesday 22 September 2021

[DEREK TWIGG *in the Chair*]

Draft Water and Sewerage Undertakers (Exit from Non-household Retail Market) (Consequential Provision) Regulations 2021

9.25 am

The Chair: Before we begin, I remind Members that Mr Speaker has stated that masks should be worn in Committee—clearly, not when you are speaking. *Hansard* colleagues would be most grateful if Members could send their speaking notes to hansardnotes@parliament.uk.

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I beg to move,

That the Committee has considered the draft Water and Sewerage Undertakers (Exit from Non-household Retail Market) (Consequential Provision) Regulations 2021.

It is a pleasure to have you in the Chair this morning, Mr Twigg. This instrument was laid before the House on 20 July. The technical amendments in it amend the Water Industry Act 1991 to reapply provisions to water and sewerage undertakers—generally known as water companies—operating in retail exit areas wholly or mainly in England that were disapplied by the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016. I should make it clear that all the amendments introduced by this instrument are technical operability amendments and do not introduce any policy changes.

The 1991 Act is the principal piece of legislation setting out the duties and functions of water companies wholly or mainly in England and wholly or mainly in Wales. The Water Act 2014 enabled reform of the water sector by extending the scope for competition in the water sewerage market for non-household retail—basically, business services wholly or mainly in England. That market is a devolved matter, and the 2016 regulations applied to undertakers operating wholly or mainly in England only.

The 2016 regulations put reform in place by amending the 1991 Act for water companies whose areas were wholly or mainly in England to establish a non-household retail market for the water and sewerage services supplied by companies to non-household business customers such as food retail companies or housing developers. The regulations enabled water companies to apply to the Secretary of State for permission to exit the non-household retail market in their area of appointment. Subject to the approval of the Secretary of State, the undertaker would exit the retail market by transferring its non-household retail business to one or more operators known as retailers, and would therefore be prohibited from providing retail services to any new non-household customers that arose in its area of appointment. At this

time, all of England's incumbent companies have exited the non-household retail market—Yorkshire Water was the last to exit, in 2019.

The retail market is still in its infancy. However, the new retailers serving businesses across England with water services are making significant progress towards building a thriving market for retail services. The Department for Environment, Food and Rural Affairs is reviewing progress in the business retail market through a post-implementation review of the retail exit regulations.

The opening of the retail market was the biggest change to the water sector in more than 25 years and created the largest competitive water retail market in the world. That underlines the Government's commitment to markets underpinned by strong, independent regulation that protects customers and the environment. Yet, as is the case with many new endeavours, there is more work to be done to ensure that the market achieves its full potential and that our legislation supports its further development. Our post-implementation review will look in the round at progress since market opening.

In this instrument, I invite Members to approve technical amendments that would overcome a small but important barrier to the efficient functioning of the business retail market. The main retail services provided to non-household customers—that is, businesses—through the retail market are billing and administration services. However, with the opening of the market, it was envisaged that the retailers could also provide developer services to housing developers. Those services primarily concern connections to water and sewerage services for new developments that are part of the developer's business until their construction is completed and residents are living and working on the estate. The residents then transfer as customers away from the retailer to the water companies.

The 2016 regulations enabled developer services to be part of the market through the removal of some of the 1991 Act duties on water companies operating in the retail exit areas. DEFRA recognised that some developers might still wish to work with a water company for the new connection services, and we anticipated that developers choosing that route would make their own contractual arrangements with the company. However, in subsequent discussion with Ofwat and the water industry, it has emerged that contractual arrangements are not straightforward—surprise, surprise. They also do not sufficiently replicate the provisions in the 1991 Act that had previously applied, and do not enable Ofwat to determine any complaints from a developer about the service the water company provides. Retailers are largely choosing not to be part of this new service—the developer services market—because of the technical nature of the services. Most residents of new developments are also household not retail customers, so there are limited new retail customers once the connections and so forth have been made.

The first reapplication—that is what we are talking about today—is section 41, which concerns the water company's duty to provide a water main for the water supply in a retail exit area. That enables the developer to request the service from the water company directly, and the water company to provide it without reference to the retailer, although the developer can still use the retailer if the retailer offers a service.

Section 45 is reappplied, and concerns a duty to make a connection with a water main for domestic supply in a retail exit area. As with section 41, the retailer can also provide the service. Section 52 is also reappplied, by way of reapplying section 45. The duty in it concerns domestic water supply and the water company maintaining the connection between the water main and the service pipe. It applies only in relation to premises connected under a connection notice made under section 45. We are therefore talking about provision, connection and maintenance. Section 98 is also reappplied, and concerns the duty to provide a public sewer or lateral drain.

Reapplying those duties means that they once again become functions of the undertaker in retail exit areas—undertakers being, for example, water companies. They also reapply other powers to the water companies with regard to the laying of pipes, the timescales for doing so and the maintaining of those pipes.

We have also modified the provisions so that if a developer first approaches the retailer for the service, and the retailer chooses to undertake it, the developer cannot then change its mind and ask the water company to provide the services directly to them.

Much liaison has gone on over these issues with the water companies, retailers, Ofwat, Water UK and operators, and there has been a consensus that the provisions that the regulations reapply are much needed.

The Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee have formally considered this instrument and approved it. In line with the published guidance, there is no need to conduct an impact assessment for the instrument, because no, or no significant, impact on the private or voluntary sectors is foreseen as the instrument relates to the maintenance of exiting regulations. Finally, the territorial extent of the instrument is England and Wales, and its territorial application is England. On that note, I commend the draft regulations to the Committee

9.34 am

Olivia Blake (Sheffield, Hallam) (Lab): It is a pleasure to serve under your chairmanship, Mr Twigg. It is also a pleasure to serve as the Opposition Front Bencher in my first Delegated Legislation Committee, on the important issue of ensuring that non-household customers are provided with, and can connect to, the water and sewerage mains.

As the explanatory note sets out, the regulations are needed because of the unintended consequences of a previous statutory instrument in 2016. Those regulations built on the Water Act 2014 and were intended to provide for the exit of water companies from the non-household retail market, and to help to increase competition in that area. As the Minister set out, this process is still in its infancy, and I would be interested to learn what more can be done to increase that competition.

We will support the SI today, which is technical and fills in some of the gaps in the legislation. It reverses some of the 2016 SI by reinstating the duty on undertakers to provide connection services in retail exit areas. Can the Minister set out what effect removing the duty has had on people's businesses? Have there been any unintended consequences, and have any domiciles or businesses been unable to connect to water mains or sewerage systems because undertakers are not obliged to make a connection? Do we know how many businesses might have been affected?

I am pleased that the explanatory notes say that no significant impact is foreseen, but that strikes me as an odd thing to say, and I hope the Government see their legislative agenda—even in a Delegated Legislation Committee—as impactful. I am also not sure that it is right to say that the regulations will have no significant impact. I would have thought that if a water connection company declines to provide a connection service, there must be either a business case against it or the company's infrastructure is working at capacity in that area. If the statutory responsibility for connecting to the water mains will now, again, rest with the water provider, that must be associated with extra costs for the water provider. Can the Minister give an assurance that those costs will not be passed on to bill payers, and how will Ofwat ensure that any increases in charges are not prohibitively expensive?

We agree with reinstating the duty on water companies to make water and sewerage connections for businesses, but it underlines the need to relieve some of the stresses on water systems to ensure that they can meet demand, especially on sewerage and waste water. For example, we need some consideration of water metering by water companies, not just retailers, and we need provision for investment in sustainable drainage systems and natural flood mitigation to relieve added stresses on the system. The Government could be doing so much more to develop sustainable infrastructure.

We welcome the regulations, but it would be in the interests of businesses and the environment to consider the broader implications, as I am sure we will in further legislation.

9.38 am

Rebecca Pow: I welcome the shadow Minister to her first Delegated Legislation Committee. I know—I will not say I fear—that we will meet many more times. I have at least 40 provisions coming my way, so you may also have the pleasure, Mr Twigg. I thank the hon. Lady for her comments, and I welcome the fact that the Opposition support the regulations and recognise that they are much needed and technical. They are more of a formality to keep the important provision of our mains water and sewerage connections running smoothly.

The hon. Lady referred to sustainable development, which is something the Government are mindful of, especially in DEFRA, which is working closely with the Department for Levelling Up, Housing and Communities on that agenda to ensure that whatever we build is built sustainably with the environment in mind. That is why it is so important that we get water and sewerage connections right. I will not go on about that further, but I could. There is a lot in the Environment Bill on such issues.

We have not received particular intel about a negative impact on businesses so far, because the water companies have stepped in to carry out the role even though, legally, it was not actually in their power. They did not have to do it, but out of the generosity of their hearts they have carried on doing it. That is why it is important to make this tweak and put the duty formally in legislation.

The shadow Minister asked, sensibly, whether the regulations will have an impact on bill payers. Ofwat is the regulator of the water companies, and the Government give guidance to Ofwat, and there is always the proviso of considering the cost to the bill payer and, similarly,

[Rebecca Pow]

to look after vulnerable customers. There are strict criteria to help vulnerable customers, and we are always mindful of them. I hope that provides some reassurance.

I thank the shadow Minister for her support for the regulations. The debate has highlighted the complexity of the water industry and the legislation that governs it, and this is only a tiny part of it. The SI makes no change to the water retail policy for developer services: it will just enable us to refine our legislative approach to

delivery. As I have outlined—colleagues said they had some two-hour speeches prepared, but I hope that all their questions have been answered—all the changes are technical operability amendments that are required to ensure that we can continue to operate the regulations and the retail market. I commend the draft regulations to the Committee.

Question put and agreed to.

9.42 am

Committee rose.