

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fifth Delegated Legislation Committee

## DRAFT WATER AND SEWERAGE UNDERTAKERS (EXIT FROM NON-HOUSEHOLD RETAIL MARKET) REGULATIONS 2016

*Thursday 7 July 2016*

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**Monday 11 July 2016**

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**The Committee consisted of the following Members:**

*Chair:* MR GARY STREETER

- |  |   |
|--|---|
| † Cartlidge, James ( <i>South Suffolk</i> ) (Con)      | † Newton, Sarah ( <i>Truro and Falmouth</i> ) (Con)   |
| † Cummins, Judith ( <i>Bradford South</i> ) (Lab)      | † Phillips, Stephen ( <i>Sleaford and North Hykeham</i> ) (Con)   |
| Dowd, Peter ( <i>Bootle</i> ) (Lab)                    | † Rimmer, Marie ( <i>St Helens South and Whiston</i> ) (Lab)  |
| Evans, Chris ( <i>Islwyn</i> ) (Lab/Co-op)             | † Spencer, Mark ( <i>Sherwood</i> ) (Con)   |
| Flint, Caroline ( <i>Don Valley</i> ) (Lab)            | † Stewart, Rory ( <i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i> ) |
| † Fuller, Richard ( <i>Bedford</i> ) (Con)             |   |
| † Graham, Richard ( <i>Gloucester</i> ) (Con)          | Fergus Reid, <i>Committee Clerk</i>   |
| † Knight, Julian ( <i>Solihull</i> ) (Con)             |   |
| † Malthouse, Kit ( <i>North West Hampshire</i> ) (Con) | † <b>attended the Committee</b>   |
| † Maskell, Rachael ( <i>York Central</i> ) (Lab/Co-op) |   |
| † Morton, Wendy ( <i>Aldridge-Brownhills</i> ) (Con)   |   |

## Fifth Delegated Legislation Committee

Thursday 7 July 2016

[MR GARY STREETER *in the Chair*]

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

11.30 am

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

That the Committee has considered the draft Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

It is a great privilege to serve under your chairmanship, Mr Streeter. I warmly welcome the new shadow Secretary of State for Environment, Food and Rural Affairs, the hon. Member for York Central.

For the Committee's benefit, let me provide a brief introduction to the regulations. They are set within the context of the Water Act 2014. People who were in the House at the time or who have taken an interest will remember that the Act basically did three things. The first thing was that it provided affordable flood insurance under the Flood Re process, which guarantees that people in a flood-vulnerable area are able to access flood insurance at affordable rates that are attached to their council tax bands. The second thing was that the Act provided for reform to the upstream water markets, which is complicated work that relates to what happens right up at the source of the water. The third thing, which is what the regulations are specifically relevant to, is the non-household retail end: the Act provided, not for individual houses but for businesses and others, an ability to have more efficient services. That involves billing, meter reading, handling of calls, complaint handling and water efficiency services.

I will give a couple of examples to show how the regulations are relevant to people. An organisation such as Tesco that has a lot of stores spread out across the country would be able for the first time to get a package to cover its thousands of stores and to get all its efficiency services—controlling the amount of water used, its bills and its complaints—handled centrally. That is also relevant to large water users. Imagine an electricity utility company or a brewer that uses a huge amount of water. Suddenly there is a market opportunity for a retailer to turn up and offer it a specific package. All Members present will be able to think of analogies, such as the way in which, in the electricity and gas markets, new people enter the market and are able to offer more tailored, more efficient and more affordable services.

Specifically, the regulations come out of an amendment to the 2014 Act. They focus on two things: one is the process that a retailer that wishes to offer such services has to follow in order to get approved, and the other—their exact focus—is the exit of the previous holder. Let us

imagine that there were a water company in my constituency of Penrith that currently provides those retail services. The regulations define the conditions under which that existing company can leave the market and somebody else can come in.

This has been a very serious piece of parliamentary drafting, which has been going on for almost two years. The conditions that have been set out essentially revolve around five key principles that drive this type of regulation. The first, which is very important, is equivalence, which means that you as a customer will be able to get the same service from the new entrant that you had from the previous retailer—it is a guarantee for the customer. The second is what I would call a principle of competence, to assure that the acquiring retailer, which has been licensed by Ofwat, is competent to take over the service. The third is what I would call a principle of universality, to ensure that nobody is left out; to return to my example of a non-household customer in my constituency of Penrith, it is essential that when the transfer takes place they do not get left out of the system, so these regulations provide for that guarantee of universality. The fourth principle is one of control, allowing Ofwat to regulate the terms and conditions of transfer to customers. The final principle is what I would call a principle of transparency, to ensure that customers are kept fully informed through the process.

The regulations are all backed up by the provisions of the 2014 Act, which provides the framework under which Ofwat issues those licences. There has been a very thorough consultation process. Parliamentary counsel, as well as DEFRA lawyers and policy teams, have been engaged in great detail to make sure that we have tested all the principles, both with business and consumers, and that the regulations meet the needs of the age. These are sensible, well drafted regulations, which I am pleased to present to the Committee.

11.35 am

**Rachael Maskell** (York Central) (Lab/Co-op): It is always a pleasure to serve under your chairmanship, Mr Streeter, and I thank the Minister for his kind remarks.

I would like to speak on behalf of the Opposition today on these regulations. I first want to put on record my thanks for the enormity of work that has already been put in place in order to bring us to the point we are at today. Although I recognise that the 2014 Act has made it permissive to increase competition in the water and sewage industry for 1.2 million businesses, charities and public sector organisations, I want to ensure that we are thorough in our scrutiny of the regulations today. I therefore want to forward a number of questions to the Minister, to ensure that everything is watertight.

To start with, my questions are essentially on consumer protection. I want to know how long it is proposed that the exit process will take, bearing in mind that customers will need to be guaranteed the provision of the retailer before the exit is granted.

Secondly, I would like to ask how much notice a customer receives of their undertaker withdrawing from the market, since they may choose to continue a service with the retailer who has taken over the customers of the undertaker, or the customer may need time to choose an alternative retailer.

Thirdly, as the guidance notes say, there should be minimal disruption to the customer, but when it talks about minimum disruption, will there be any disruption and, if so, what disruption does the Minister envisage behind that?

Fourthly, I would like to ask about process, so that there is not confusion over billing, as has been seen elsewhere in the energy market when somebody exits the market and there is a change in licensee providing the service.

Finally on this point, I would like to know how customers will be communicated with about the changes of service provision, to enable them to maximise their choices.

**Rory Stewart:** I should be grateful if the shadow Secretary of State could clarify her fourth question on process, which I did not fully understand. There was a question on notice, a question on minimum disruption and then I missed the question on process.

**Rachael Maskell:** I am more than happy to clarify that point. The question is so there is not confusion around billing between the different organisations. When somebody exits the market, there will obviously be a new licensee who is providing that service, and, as has been seen elsewhere in the energy market, there has been confusion about the billing process. We need to make sure that customers are able to be communicated with by one organisation and be clear that they are not billed twice.

It is also essential that customers experience no detriment and, while I recognise the principle of equivalence, detriment could occur to non-household customers. I therefore seek further reassurance on behalf of customers. For example, while outstanding complaints will be passed to the new licensee, the guidance is silent as to how potential liabilities will be addressed. That could result in remedies being less favourable to the customer. Can the Minister bring clarity to that, since the guidance simply states that this is dependent on the commercial agreement drawn up? A current customer would want confidence that the terms on which they raised their complaint would result in no less favourable outcome.

For customers whose undertaker withdraws from the market, can the Minister confirm that, should they choose to deal with a different licensee from that which took over the customer base from the undertaker, they will have two years through which to switch from and back to them again, should they choose? Again, this is slightly ambiguous, but I know was raised in the debate on the regulations in the other place.

With regard to the risks identified, I note that there is expected to be an increased financial risk both to Ofwat and to DEFRA. What assessment has been made of the size of the risk in the light of the already severe cuts to the Department?

Finally, I would like the Minister to clarify a couple of questions on consequential issues appertaining to the measure. One of the most important areas of work in the industry looks at water-saving initiatives. Clearly these must be across the whole water and sewerage industry, and not just seen as a customer responsibility. How will the undertakers and the licensees work together to ensure that water conservation remains a priority in this new fragmented environment?

The second consequential issue appertains to householders. Although these regulations do not appertain to householders, householders and non-householders currently deal with the same water companies. After April next year, that may not be the case. I note that in the other place's scrutiny of these regulations, the Minister said that they would be subject to the current cost basis for their water and sewerage in this five-year cycle. However, what risk assessment has been made on the impact on households? If none has been undertaken, will the Minister look into the matter?

Labour recognises that the Government's ambition is to protect the consumer in the light of the permissible action available from the 2014 Act through these regulations. Although we have concerns about further marketisation and fragmentation of the water and sewerage industry, we believe that, subject to the Minister's response today, we will not be calling for the Committee to divide.

**The Chair:** The Minister has plenty to get his teeth into there.

11.41 am

**Rory Stewart:** You can understand why I welcomed the shadow Secretary of State to her position, Mr Streeter. I think I have nine different questions here, which I will try to deal with one by one. If I miss anything, I am very happy to continue the debate through interventions.

I think the first question was around time and notice. The notice provisions are covered under regulation 12, as the shadow Secretary of State will be aware. Regulation 12(4) clarifies that,

"notice must be given...in the case of a person who is a customer immediately before the Secretary of State grants permission for the relevant undertaker to withdraw from the non-household retail market, at least 2 months before the exit date".

On disruption, and the process we follow in terms of customer bills, the industry has set up a new company called Market Operator Services Ltd whose job is to build and manage a database of accurate information to enable switching and settlement.

There was a question on detriment and, in particular, complaints. This subject is dealt with in regulation 17, "Transfer of outstanding complaints", at paragraph (3). As the shadow Secretary of State presumably knows, it went through a great deal of debate, both within the Department and with the parliamentary draftsman. Paragraphs (1) and (2) are largely laying out the terminology; the key to regulation 17 is paragraph (3), which states:

"Anything done by or in relation to the relevant undertaker in connection with the complaint is to be treated, on and after the exit date, as having been done by or in relation to the acquiring licensee."

Clearly we all believe that excess words turn septic. The decision was that that was the clearest way of laying out the complaint. To return to my Penrith example, had I lodged a complaint as a non-household customer against the hypothetical Penrith Water Company that existed previously, at the date on which the exit takes place my complaint would become a complaint against the new company and would be treated as such.

**Rachael Maskell:** On that very point, although I understand that the complaint will be dealt with, as with the old undertaker, by the new licensee, can the Minister confirm that the remedy will be the same with the new licensee, as per the commercial agreement?

**Rory Stewart:** This is a very important technical question. The understanding of the Department and our legal experts is that this would be governed through normal legal contract arrangements. That is why it has been left as a very short sentence, as we believe that the existing procedures, regulated by Ofwat, will be sufficient to ensure that the complaint process is properly handled. We believe that putting in excess words and trying to micro-manage the detail of the process will not end up in as good and transparent a result for the customer as simply making it clear that normal complaint procedures are followed for the new company, regulated by Ofwat, as they would have been for the pre-existing Penrith company. I am confident that this is the best and most straightforward way of proceeding, but I understand the shadow Secretary of State's anxiety.

On the question of switching, there are two key principles that underlie the regulations: completion and permanence. Although there were some suggestions during the debate in the other place, as the shadow Secretary of State pointed out, that it might be possible for a customer to leave and return—to leave my putative Penrith company and then hop back to them later—we decided, after a great deal of consultation, that that is not the correct way to proceed. The correct way to proceed is that it is complete and it is permanent. The Penrith company leaves, the new entrant enters and that is the end of it. There is no way for the Penrith company to then come back into that market or for an individual non-household customer to move back and forth between their previous provider and the new one. That is very important in order to have the market opportunity and flexibility for a new entrant. Let us imagine that a Scottish retailer wished to come into the retail market. It would need to be able to pick up a critical mass of customers and would not be able to do that unless there was a clear and completed exit procedure that meant the customer could not switch back.

The shadow Secretary of State made an additional point about the financial risks to DEFRA and Ofwat. We have looked at that in considerable detail. We do not believe that there are any financial risks to DEFRA. The costs, in so far as they fall, will fall on the industry. There is a very detailed cost-benefit analysis of what that will mean for the industry. Our assessment, based on our best evidence from a team of economists, and agreed by the industry, is that instead of being a net cost for the industry, the benefits over a 30-year period are in the order of £200 million.

**Rachael Maskell:** Could I just clarify the point about additional financial risks for DEFRA? My understanding is that the application to exit the market needs to be

made to the Department. Therefore, surely that will mean that there are consequential risks as a result of administering the process.

**Rory Stewart:** The shadow Secretary of State is absolutely right. The applications are made to the Department, will be cleared by departmental officials and signed off by the Secretary of State, but as she will be aware, the application for determination is a relatively straightforward process. The Secretary of State must grant permission, unless it is contrary to the interests of the public or the relevant undertaker has failed to comply with regulation 9. The bulk of the due diligence is done through Ofwat granting a licence to the individual, and Ofwat has a serious process in place to decide whether somebody is a competent operator. If that individual has received a licence from Ofwat—in other words, they are a competent operator approved by Ofwat—all our Department will be looking for in that process is that the proper notifications to the public have gone through, that the proper forms have been filled in, and that there is a clear agreement on who is exiting and who is taking over that market to provide the universal service to the customer.

The final issue raised was about the issue of water conservation and household customers. Household customers is a future piece of business. We are now talking about that issue, but it is not covered by these regulations. I am very happy to talk to members of the Committee and to the shadow Secretary of State about the detail of household customers in future, when that comes forward. These regulations cover non-household customers.

Water conservation is central to our strategic work and we have to consider it in every way, on both the supply side, such as leakage from pipes, and the demand side, such as how to reduce water use. One of the things that these measures should do, particularly for big water users—I give the example of utility companies, brewers or Tesco—is to provide really good incentives to reduce water use. There is more that we could do right across this issue. Water meters will be an important part of reducing demand. Finally, we have a huge process going forward, led by the water industry but with DEFRA closely involved, that is looking at long-term infrastructure investments—that could include interconnecting pipes and new reservoir systems—to provide for the possibility of drought and climate change in the future.

*Question put and agreed to.*

11.50 am

*Committee rose.*