

To: Business Committee  
From: Carwyn Jones AM  
Minister for Environment, Planning and Countryside

## **EXPLANATORY MEMORANDUM**

### **WATER INDUSTRY, ENGLAND AND WALES**

#### **The Water Supply (Exceptions From Supply System Prohibitions) Regulations 2005**

##### **Summary**

**The Water Act 2003 amended the Water Industry Act 1991 to require water undertakers in England and Wales to grant licensed water suppliers access to their supply systems under certain conditions in order to supply water to eligible premises of customers. These draft Regulations are part of the secondary legislation necessary to implement the competition regime in water supply. The 1991 Act (as amended) prohibits the use of, or the introduction of water into, a water undertaker's supply system except by a water undertaker or a licensed water supplier in pursuance of an agreement or a licence. The Regulations specify further circumstances in which there are exceptions to this prohibition.**

**The Regulations are being made by the National Assembly for Wales in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales and by the Secretary of State for Environment, Food and Rural Affairs in respect of all other water undertakers' supply systems. The two main Welsh water undertakers, Dwr Cymru and Dee Valley, also supply English customers, thus there will be cross border issues, which would be better managed by introducing these new provisions via Regulations jointly with the Department for Environment, Food and Rural Affairs (Defra).**

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Water Supply (Exceptions from Supply System Prohibitions) Regulations 2005, in accordance with Standing Order 25, Section 3.
2. A copy of the Instrument is submitted with this Memorandum.

##### **Enabling Powers**

3. The powers enabling these Regulations to be made are contained in sections 66I(3) and 66J(3) of the Water Industry Act 1991. These powers are exercisable by the National Assembly for Wales in relation to any supply system of a water undertaker whose area is wholly or mainly in Wales and have, in turn, been delegated to my portfolio as Minister for Environment, Planning and Countryside. These Regulations are being made together by the National Assembly for Wales and the Secretary of State for Environment, Food and Rural Affairs.

4. While it is possible to make Assembly-only Regulations in this case, they would still be subject to Parliamentary procedure by virtue of section 44(4) of the Government of Wales Act 1998 as they would relate to cross border bodies. Thus Standing Order 25 & Parliamentary procedures would apply to the exercise of the Assembly's powers to make the above Regulations, whether those Regulations were made on an Assembly-only basis or on a composite basis.
5. Joint Regulations avoid potential difficulties for water suppliers throughout the water supply network by helping to ensure that the policy of competition in the water industry is introduced on a consistent basis and allows for cross border issues to be better managed.

### **Effect**

6. The Water Industry Act 1991, as amended by the Water Act 2003, requires water undertakers to grant licensed water suppliers access to their supply systems under certain conditions and for certain purposes. A retail licence permits a licensed water supplier to use a water undertaker's supply system to supply water to eligible premises of customers. A combined licence additionally permits a licensed water supplier to introduce water into a water undertaker's supply system in order to supply that water to eligible premises of customers.
7. Section 66I of the Act prohibits the use of a water undertaker's supply system for the purpose of supplying water to any premises of a customer. This prohibition does not apply if the supply is made by the water undertaker, by a licensed water supplier in pursuance of its licence, or in such further circumstances as may be specified in Regulations.
8. The Water Industry Act 1991 will, from 1 December 2005, prohibit:
  - the use of a water undertaker's supply system for the purpose of supplying water to any premises of a customer except by the water undertaker or by a licensed water supplier in pursuance of its licence; and
  - the introduction of water into a water undertaker's supply system (other than by the undertaker itself) except by a licensed water supplier in pursuance of its licence or by another water undertaker under an agreement for a supply of water in bulk.
9. These Regulations specify, in both the above cases, further circumstances in which the prohibitions shall not apply. These are:
  - Regulation 3(1)(a) and (b) allows one water undertaker ("water undertaker A") to use the supply system of another undertaker ("water undertaker B") where water undertaker A receives a bulk water supply from water undertaker B under an agreement or certain statutory requirements. The exception in relation to bulk supply agreements does not apply where water undertaker A is using water undertaker B's supply system under a "common carriage" arrangement.

- Regulation 3(1)(c) allows private supplies made under arrangements, which were active before 31st July 2002 to continue.
- Regulation 4(1)(a) allows the introduction of private water resources into an undertaker's supply system where a water undertaker agrees. This exception does not apply where the introduction is part of a "common carriage" arrangement.
- Regulation 4(1)(b) allows a water undertaker to introduce water into another water undertaker's supply system under a bulk supply arrangement.
- Regulation 4(1)(c) sets out provisions under which a secondary water undertaker is allowed to make an introduction of water into a primary water undertaker's supply system.
- A common carriage arrangement is one where a water supplier uses another water undertaker's supply system to enable a supply to be made to a customer's premises.

### **Target Implementation**

10. It is intended that these Regulations be made on 1 November 2005. Defra have timetabled them to be laid in Parliament on 4 November 2005 and come into force on 1 December 2005. The Regulations need to be in place at the start of the new competition regime on 1 December 2005.

### **Financial Implications**

11. There are no additional financial implications for the Assembly arising from these Regulations. Neither will there be any additional costs to water suppliers or customers as a result of these Regulations.

### **Regulatory Appraisal**

12. As this Instrument falls outside the definition of Assembly general subordinate legislation in section 58 of the Government of Wales Act 1998 a Regulatory Appraisal is not required to be undertaken.

### **Consultation**

#### With Stakeholders

13. The draft Regulations were published in a joint Ofwat/Defra/Welsh Assembly Government consultation paper, which was subject to public consultation between 21 December 2004 and 22 March 2005. There were 26 responses from stakeholders in both Wales and England. The majority of respondents supported the proposals. However some minor changes were made to the provisions relating to the prohibition exemptions for private supplies in the light of the responses from consultees. A list of consultees is attached at Annex A.

#### With Subject Committee

14. These Regulations were notified to the Environment, Planning and Countryside Committee via the list of forthcoming legislation on 6 October 2004 (EPC(2) 09-

04 Paper 4 – Annex 1) and have remained ever since. These Regulations were not identified for detailed scrutiny.

### **Recommended Procedure**

15. Subject to the views of Business Committee, I recommend that these Regulations proceed to Plenary under the Accelerated procedure because they are of a very technical nature – one of a set of three current Regulations prescribing technical requirements associated with the implementation of the competition regime in water supply.

### **Compliance**

16. The proposed legislation will (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998 section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community law (section 106);
- be compatible with the Assembly's human rights legislation (section 107); and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

17. The information in this Memorandum has been cleared with the Directorate of Legal Services (DLS) and the Assembly Compliance Officer (ACO).

18. Drafting lawyer: Manon Davies (Ext 1096)

19. Head of Division: June Milligan (Ext 3256)

20. Policy Drafting Official: Patrick Moran (Ext 5629).

**CARWYN JONES AM**

**OCTOBER 2005**

**MINISTER FOR ENVIRONMENT, PLANNING AND COUNTRYSIDE**

## Annex A

<b>Organisation</b>
WMS
Engage Consulting Limited
CIWEM
English Nature
Lagur Steering Group
Private Address
University of the West of England, Estates Department, UWE,
Linkwork Ltd
Atkin Consultants Limited
Private Address
SembCorp Utilities (UK) Limited,
EIC (Energy Information Centre)
Countrywide Energy
Corus Strip Products UK
Major Energy Users' Council
British Ceramics Confederation
Iggesund Paperboard (Workington) Ltd
Shell UK Ltd
The Kellogg Company of Great Britain
Chemical Industries Association Ltd
Northern Foods plc
Coors Brewers
Local Government Association
National Federation of Small Businesses
Logistic Support Branch Accommodation Servcs
Forum for Private Businesses
Dorset County Council
Chartered Institute of Purchasing & Supply
The Energy Consortium
House Builders Federation
WaterVoice Northumbria
Suffolk County Council
Chilled Food Association
ECM (UK) Ltd
The Boots Company plc
Major Energy Users Council
BP Chemicals
Total Energy UK Ltd
GlaxoSmithkline
Nissan Motors Manufacturing UK Ltd
Chartered Institute of Purchasing & Supply
Bournemouth Borough Council Technical Services
LASER, Kent County Council
Food & Drink Federation
Human Resources, Corporate Purchasing
LASER & founder of LAGUR
Utility Consumers' Consortium
Imerys Minerals
Cornwall Partnership Trust
The Boots Company plc
CIPS Energy Committee
NHS Purchasing & Supply Agency
National Farmers Union
TotalEnergy UK Ltd
Aquavitae (UK) Ltd

Aqua Resources Ltd
Fairmilehead
Veolia Water UK
Polaris Management Limited
Waterlevel Limited
Lanara Holdings Limited
Access Water Management Limited
Water Grid Limited
C2C Services Limited
Biwater plc
Albion Water Ltd
Anglian Water Services Ltd
Bournemouth & West Hampshire Water Plc
Bristol Water Plc
Cambridge Water Plc
Cholderton & District Water Ltd
Dee Valley Water Plc
Folkestone & Dover Water Services Ltd
Mid Kent Water PLC
Northumbrian Water Ltd.
Portsmouth Water Plc
Severn Trent Water Plc
South East Water Plc
South Staffordshire Group Plc
South West Water Ltd
Southern Water Services Ltd
Sutton and East Surrey Water Plc
Tendring Hundred Water Services Ltd
Thames Water Utilities Ltd
Three Valleys Water Plc
United Utilities Plc
Welsh Water (Dwr Cymru Cyfyngedig)
Wessex Water Services Ltd
Yorkshire Water
Department of Environmental, Food and Rural Affairs
Environment Agency
Water UK
DWI
Gemserv Limited
London and Continental Stations and Property Ltd
Welsh Assembly Government
ElectraLink Ltd
Consumer Representation Division
Rockwood Additives
Agfa-Gevaert
Commercial Development Department
BP Chemicals
Northern Foods plc
Ineos Silicas Ltd
Ineos Chlor Limited
B & Q Plc
Terra Nitrogen
Ford Motor Company
John Hall Associates
Millennium Inorganic Chemicals
Confederation of British Industry
Surrey County Council
Association of Consulting Engineers

NIFES Consulting Group
Office of Government Commerce Buying Solutions
Water Management
HMT
Water Industry Commission for Scotland
Formfill
WaterVoice Central
WaterVoice Eastern
WaterVoice Northumbria
WaterVoice North West
WaterVoice Southern
WaterVoice South West
WaterVoice Thames
WaterVoice Wales
WaterVoice Wessex
WaterVoice Yorkshire