

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

EXPLANATORY MEMORANDUM

The Water Industry (Prescribed Conditions) (Wales) Regulations 2004

Summary

These Regulations, which are being made under sections 144A, 144B and 213(2) of the Water Industry Act 1991 (“the 1991 Act”), prescribe additional conditions that must be satisfied before:

- **a water consumer may revoke their election for charging by reference to volume; and**
- **a water undertaker can fix charges on a measured basis without a consumer’s consent.**

1. This memorandum is submitted to the Assembly Business Committee in relation to The Water Industry (Prescribed Conditions) (Wales) Regulations 2004 in accordance with Standing Order 23 (Section 1).
2. A copy of the instrument is submitted with this Memorandum.
3. The powers enabling this Instrument to be made are contained in sections 144A(5)(b), 144B(1)(c), and 213(2) of the 1991 Act (sections 144A and 144B were inserted by sections 6 and 7 of the Water Industry Act 1999) and apply only to those water undertakers operating wholly or mainly in Wales; at the present time Dŵr Cymru and Dee Valley Water.
4. The intended effect of the Instrument is to enable consumers to elect to be charged for their water by reference to volume supplied (which is measured by means of a water meter installed free of charge) and, if they should choose, to revert to an unmeasured charge within 12 months of the date on which their supply began to be measured for charging purposes. The right to revocation only applies when the conditions set out in section 144A (6) and (7) of the 1991 Act, and those that may be prescribed in regulations are satisfied. Additionally, water companies will not be permitted to impose meters on customers who are charged on an unmeasured basis, unless they are using water in certain premises and in circumstances specified in section 144B(1)(a) and (b) of the 1991 Act or in ways that are prescribed in these regulations. Section 213(2) of the 1991 Act sets the terms for any regulations made under the Act .

Target Implementation

5. It is intended that the proposed Regulations be made on or before 4 February 2004, laid before Parliament (subject to Annulment) by 6 February 2004, with a coming into force date of 27 February 2004. This will enable the water companies to include reference to the Regulations in their ‘Schemes of Charges 2004/05’ booklets that will issue to customers at the beginning of April 2004. Failing

this, the information will not, as a matter of course, be provided to customers until the start of the following financial year.

Financial Implications

6. The financial implications of making these Regulations are set out in the attached Regulatory Appraisal. Essentially, the Regulations will impose no additional costs on either of the two 'Welsh' water companies. In the event that either company applied for part, or all, of their area to be designated as an 'Area of Water Scarcity' some very minor administrative costs would arise for the Assembly in considering any such applications; similarly very minor administrative costs would arise for those organisations (identified in the regulations) who would be consultees to any such applications. In all cases such costs will be absorbed within existing, and planned, administration costs budgets. Consequently the implementation of these regulations will not result in any additional financial implications for the Assembly.
7. Financial Planning Division have been consulted and are satisfied with the financial implications stated above.

Regulatory Appraisal

8. A regulatory appraisal has been carried out in relation to this Instrument and is attached.

Consultation

With stakeholders

9. On 25 July 2003, the Welsh Assembly Government issued a formal consultation paper (including a proposed draft of the Regulations) to just under 60 environmental, water industry, consumer, political and local authority stakeholders. The consultation period lasted 8 weeks and eight responses were received. Overall respondents were supportive of both the content and intended purpose of the Regulations. For the most, part, they agreed that metering, in the circumstances proposed was a fair way to expect consumers to pay for the water they use. They also acknowledged that the Regulations would play a positive role in encouraging water conservation and recognised the positive impact they could have on our environment and the habitats it sustains. Some respondents identified potential economic development benefits that could evolve as a consequence of improved water conservation. No objections to the proposals were received

With Subject Committee

10. This Instrument was included in lists of forthcoming legislation submitted to the Environment, Planning and Countryside Committee on 16th July 2003 and 8th October 2003. It was not identified for formal Subject Committee scrutiny.

Recommended Procedure

11. These regulations are unlikely to be regarded as contentious and, subject to the views of the Business Committee, it is recommended that these Regulations proceed to Plenary under the Accelerated procedure.

Compliance

12. The powers to make these Regulations are provided for in sections 144A(5)(b), 144B(1)(c) and 213 (2) of the 1991 Act (sections 144A and 144B were inserted by sections 6 and 7 of the Water Industry Act 1999). Those powers have transferred to the Assembly by virtue of section 2 of the National Assembly for Wales (Transfer of Functions)(No.2) Order 1999. Once approved and made by the Assembly, the Regulations will be laid before Parliament and subject to Annulment. The powers have been transferred with respect to water companies operating wholly or mainly in Wales; at the present time Dwr Cymru and Dee Valley Water. Assembly functions in and under the Act have been delegated to the Minister for Environment, Planning and Countryside. Those in the Regulations will therefore also stand delegated.

13. The Regulations 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 210);
- 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);
- Be compatible with any international obligations binding the UK Government and the Assembly (Section 108).

14. This memorandum has been cleared by the Office of the Counsel General, by Financial Planning Division and by the Assembly Compliance Office.

15. Policy Division contact – Gretchen Makinson ext. 5420

Carwyn Jones AM
Minister for Environment, Planning and Countryside

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