

Explanatory Memorandum

The Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 (Guaranteed Service Standards Regulations)

This Explanatory Memorandum has been prepared by the Department of Environment, Sustainability and Housing and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

(i) **Description**

These regulations revoke the existing *Water Supply and Sewerage Services (Customer Service Standards Regulations 1989)*. The new Regulations will also extend the rights of customers to payments for flooding of customers' land or property by sewer overflowing and will ensure that the service standards are now the same regardless of whether the area of water undertaker or sewerage undertaker is or is not wholly or mainly in Wales.

(ii) **Matters of special interest to the Subordinate Legislation Committee**

These amendment Regulations are to be made on a composite basis with the Defra Minister of State.

(iii) **Legislative Background**

Section 39 of the Water Industry Act 1991 provides that the Welsh Minister may make these regulations providing various preconditions have been met. The powers to make regulations under sections 38 and 95 of the Water Industry Act 1991 were transferred to the National Assembly for Wales in relation to water companies operating wholly or mainly in Wales by article 2 of Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999. By virtue of section 162 of, and paragraph 30 of Schedule 11 to the Government of Wales Act (GOWA) 2006, those functions are now exercisable by the Welsh Ministers.

(iv) **Purpose and intended effect of the legislation**

On 5 April 2007, Regina Finn, Chief Executive, Ofwat, wrote to Carwyn Jones AM then Minister for Environment, Planning & Countryside, recommending amendments to the current Guaranteed Standards Scheme to improve the provision for customers affected by sewer flooding by setting a minimum payment level for internal sewer flooding and by introducing a new standard for external sewer flooding .

The regulations will provide a consolidated text, in revised language, of the revoked Regulations and also introduce the following standards and payments for customers that experience sewer flooding:

- set a minimum payment level of £150 for each incident of internal sewer flooding;
- include a new standard for customers materially affected by external sewer flooding;
- set external sewer flooding payments at 50% of the annual sewerage charge for each external sewer flooding incident (minimum payment of £75 and maximum payment of £500), whichever is the greater.

The current regulatory position in England is different as amendments made by Defra in 2000 to the Water Supply and Sewerage Services (Customer Service Standards) Regulations 1989 did not extend to Wales. In practical terms there is currently no difference for water customers in Wales as both “Welsh” companies have agreed to adopt the more stringent “English” standards on a voluntary basis. The new Regulations will therefore ensure that the service standards are now the same regardless of whether the area of water undertaker or sewerage undertaker is or is not wholly or mainly in Wales.

(v) **Implementation**

It is intended that these Regulations be made on a composite basis with the Defra Minister of State and come into force on 1 April 2008.

(vi) **Consultation**

The Water Industry Act 1991 requires Welsh Ministers to lay regulations based on the recommendations of Ofwat. Ofwat launched a full public consultation exercise in November 2005 and published its response in the Summer of 2006. Ofwat wrote to the Minister for Environment, Planning & Countryside on 5 April 2007 outlining these proposals and enclosed a copy of the consultation response. It requested that the Minister consider applying the recommended changes to the Guaranteed Service Standards regulations to water companies operating wholly or mainly in Wales. The letter also informed the Minister that Ofwat had written separately to the Minister of State for Climate Change and the Environment at Defra formally making these recommendations for water companies operating wholly or mainly in England. Welsh Ministers agreed the recommendations outlined in paragraph 1 above and agreed with Defra to lay a joint statutory instrument to cover England and Wales and to bring standards and payments for undertakers wholly or mainly in Wales into line with those laid under SI 2000/2301. Defra Ministers also agreed Ofwat’s proposals.

(vii) **Regulatory Impact Assessment**

Ofwat included a Partial Regulatory Impact Assessment for the changes proposed in the ‘Dealing with customers affected by sewer flooding and the guaranteed standards scheme’ consultation, in November 2005. No further impact assessment has been prepared for these regulations since there are no material changes since the consultation paper was published.

