

Tackling Bad Debt in the Water Industry

January 2012

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www.defra.gov.uk/consult/

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Introduction

Purpose of consultation

1. Bad debt (the failure of some customers to pay their water bills) adds approximately £15 per year to the bills of paying customers. Government wishes to tackle this cost.
2. The occupier of a property is legally responsible for paying the water bill. However, at present there is no duty on the owners of residential properties to provide information on the identity of the occupier to the water company. The Flood and Water Management Act 2010 sets out provisions that allow Government to make owners liable for payment of water and sewerage bills if they fail to provide specified details of occupiers within a specified timeframe.
3. The Act empowers the Secretary of State and Welsh ministers to make regulations specifying the details that must be provided and the timing and procedure for this, for properties served by water and sewerage undertakers operating wholly or mainly in England. Welsh Ministers have identical powers to make these Regulations for undertakers whose area is wholly or mainly in Wales.
4. The Government is committed to tackling the problem of bad debt in the water industry. However, mindful of the burden that regulation may impose, we want to explore further whether the problem of bad debt could instead be tackled by water companies through a voluntary and non-regulatory approach to sharing data before bringing forward regulations. We will consider the responses to this consultation before making a final determination of the approach best suited to tackling the information gap at the heart of this problem.

Who this consultation is aimed at

5. This consultation is aimed at: water and sewerage undertakers in England, Ofwat, Water UK, organisations representing landlords, organisations representing tenants, private landlords and social housing providers, household and non-household water customers, and organisations that represent these customers (notably the Consumer Council for Water). We would also like to hear from organisations that hold data on occupancy and seek their views on the kinds of data-sharing agreements that we are proposing.
6. A list of the organisations that we have approached directly for views accompanies this consultation and is available alongside this consultation document at the Defra. However, we welcome views from any interested party or individual.

How to contribute

7. We welcome comments on any aspect of both the draft regulations and the alternative voluntary approach, particularly in relation to impacts of the regulations on water companies, landlords and social housing providers and the suggested details and timeframe for provision.
8. The closing date for written responses to this consultation is 16th April 2012. Responses should be sent to the following Defra contact:

baddebt@defra.gsi.gov.uk or by post to:

Consultation on Non-Owner Occupier Liability Regulations
Water Charging and Economic Regulation Team
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Area 2C Ergon House
Horseferry Road
London
SW1P 2AL

9. It would be helpful if email respondents would provide their name and/or the organisation they represent.

Confidentiality

10. In line with Defra's policy of openness, at the end of the consultation period, copies of the responses we receive will be made publicly available through the Defra Information Resource Centre, Lower Ground Floor, Ergon House, 17 Smith Square, London SW1P 3JR. They may also be published in a summary of responses to this consultation.

11. **If you do not consent to this, you must clearly request that your response be treated as confidential.** Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. Respondents should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000.

12. Copies of consultation responses to personal callers or in response to telephone or email requests will be supplied by the Defra Information Resource Centre (020 7238 6575, defra.library@defra.gsi.gov.uk). Wherever possible, personal callers should give the Centre 24 hours notice of their requirements. An administrative charge will be made to cover any photocopying and postage costs.

Code of practice on written consultations

13. This consultation is being undertaken in accordance with the Better Regulation Executive guidance on written consultation as set out at: <http://www.berr.gov.uk/files/file47158.pdf>.

14. If you have any comments or complaints about the consultation process, as opposed to comments about any of the issues in this consultation paper, please address them to:

Olaoluwa Osinibi
Defra Consultation Co-ordinator
Nobel House
17 Smith Square
London SW1P 3JR
Email: consultation.coordinator@defra.gsi.gov.uk

17. Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Next steps

18. All the responses received by the deadline will be analysed and a summary placed on the Defra website. After consideration of the responses, the Secretary of State will take a decision on next steps. A copy will also be placed on the Defra website.

Background

Debt in the Water Industry

19. Over the last decade, water companies have seen a rise in bad debt in the industry as a result of some households not paying their water and sewerage bills. The lost revenue is recouped by water companies from those customers who do pay their bills and this currently costs paying household customers approximately £15 per year. The level of bad debt in the water industry is approximately three times higher than that of the energy sector, despite water and sewerage bills being around a third of the cost of average energy bills.

20. Amongst utilities, water companies are in a unique situation: they have a statutory duty to supply customers, but no statutory power to withdraw their service from domestic water users, insist that occupiers or owners provide information on the identity of those liable to be charged, or to require a contract to supply the service to be made between the undertaker and the customer.

21. Under the Water Industry Act 1991, the occupier of a property is liable for charges, although the water and sewerage undertaker cannot require an occupier to provide their details in order to bill them. Before 1999, companies were able to manage this situation as they were able to withdraw services in the event of non-payment. Since the Water Industry Act 1999 came into effect, withdrawal of service through disconnection has been prohibited, so this deterrent has been lost. Companies are now only able to take action for non-payment through the court and ensure that arrears are shown on a person's credit score. Such action can only be taken against a named individual. Water companies have no direct route to obtaining information on who is liable for charges.

22. The combination of the statutory duty to supply without a requirement for customers to provide their details, and the perceived lack of consequences of non-payment, has contributed to a sharp increase in the level of outstanding revenue from domestic water customers: from £705 million in 1998-99, to £1.635 billion in 2010-11. The industry wrote off approximately £328 million of household debt in 2010-11 an increase of £168 million from the previous year.

23. This increases the total cost to the industry of collecting revenue, and these costs are paid for by customers at a cost of around almost 4% of the average water bill – a burden that has been rising over recent years. The view of the UK Government is that this burden is unreasonable, and that more effective action is needed to require customers who are able to pay their bills to do so.

24. Upon moving into a property, a customer has no obligation to contact the water and sewerage undertaker in order to receive a water supply, and does not need to sign a contract with the undertaker or provide any kind of personal information. The undertaker has a statutory duty to supply water and sewerage services.

25. Companies take a range of measures to try to obtain information about occupiers, such as calling on properties that appear to be vacant because no information has been provided or buying information from credit reference agencies. However, the costs of these methods are passed on to customers.

26. At present, when customers do not inform water and sewerage undertakers of their occupation of a property or respond to attempts by the undertaker to contact “the occupier”, the companies rely on seeking to obtain information from the owner of the property. This may first involve buying information relating to the property owner from the Land Registry. If a property is occupied by someone other than the owner there is no obligation on them or the owner to provide details of the occupier and water companies have no statutory powers to gather this information. Companies are then unable to recover revenue through the courts as action can only be taken against a named occupier.

Tenant Water Debt

27. Analysis of the Family Resource Survey by Ofwat showed that 80% of those reporting themselves as being in water debt were customers living in rented properties. Analysis by UK Water Industry Research has also shown that on average, tenants have more significant water debt; they are higher risk, have higher total debt and higher average debts. Tenant debt is split between tenants who are known to water companies but are not paying their bills, and those tenants that water companies do not hold the correct details for. The proportion of tenant debt held by this latter group is not known.

28. In some cases bad debt arises because the occupier has genuine difficulty in affording their bills. However, in other cases it may simply arise from a failure of communication because the water company has no information on whom to bill. This is a particular problem for rented properties, where average occupancy periods are lower. In some cases a customer will move in and out of a property without the undertaker being able to send a bill to a named individual. Whilst companies do attempt to recover revenue by sending bills to “the occupier” of a property, they have found that this approach yields unsatisfactory responses and recovery.

29. Once a customer has moved out of a property it is considerably harder to recover any outstanding revenue. These factors reduce water companies’ ability to recover revenue, and increase their revenue collection costs, which in turn increases costs to other customers.

30. Details of non owner-occupiers would enable water companies to bill and then, if necessary, pursue, named individuals who are not paying their bills. Landlords or managing agents of rented properties are aware of who is occupying their properties. Information on who is liable for charges in rented properties could be provided to water companies by the landlord or managing agent. At present landlords have no reason or incentive to provide this information and are not necessarily asked to do so.

31. This issue was highlighted in the final report of Anna Walker’s Independent Review of Charging for Household Water and Sewerage Charges, which recommended that: *“As a priority, the Water Industry Act 1991 should be amended to provide for a named customer and clarify who is responsible for paying the water bill”*.

32. With this in mind, provisions were made in section 45 of the Flood and Water Management Act 2010¹ (FLOWMAN) to make landlords jointly and severally liable for water and sewerage bills on failure to provide specified details within a timeframe, to be set out in

¹ The full Act is available at: www.opsi.gov.uk/acts/acts2010/ukpga_20100029_en_1

secondary legislation, to their undertaker. The Draft Regulations can be found at **Annex A** of this consultation and the relevant section of the Act can be found at **Annex B**.

33. Bringing in these regulations therefore forms **Option 1** for tackling the bad debt caused by the information gap in this consultation.

Option 1: Flood and Water Management Act 2010

34. Section 45 of the Flood and Water Management Act provides that for properties where the occupier is someone other than the owner, the owner is liable to pay the water bill unless they provide specified details of the occupiers/tenants within a specified timescale. The details specified in the draft regulations are detailed below.

35. By the landlord informing the undertaker on change of tenant, the undertaker can ensure that bills are sent to the occupier at an appropriate time to ensure that occupiers do not miss bills and, subsequently, payment. If the named occupier does not pay their bill they will face the financial consequences of non-payment, such as a low credit score or possibly court action, both made possible by there being a named individual for the undertaker to pursue. If the owner of the property fails to arrange for such details to be provided, he becomes jointly or severally liable for payment of the charges and can himself be pursued by the water and sewerage undertaker for payment.

36. It is expected that these measures will allow water and sewerage undertakers to tackle water debt by pursuing named occupiers. The owners of rented properties are not liable for unpaid bills if they have provided the details of the occupier to the water company. Ultimately, we expect that the measures will reduce the cross-subsidy of water debt paid for by other water customers.

37. The provisions included in FLOWMAN provided that the specific details that an undertaker may request and the timescale for doing so could be set out in regulations. This is the purpose of the draft regulations at **Annex A**.

38. Government recognises that obtaining any details that they do not already hold and supplying these details will impose a burden on landlords. Government is keen to minimise this burden as much as possible. For this reason, we are proposing in this consultation that the regulations specify that landlords are obliged to provide the minimum details water companies will need to pursue payment. We believe that in most cases a landlord would already have these details for his own purposes. We are proposing that in addition water companies could ask for other details, such as mobile telephone numbers and email addresses, as long as they made clear that providing those details was optional.

39. The Government proposes that if and when these Regulations come into force, details should be provided within 21 days of receipt of notification from the undertaker, and that those details should be:

- full name;
- date of birth;
- the date the occupier moved into the residential premises;

40. We believe that these details will provide water companies with the basic information they need to be able to contact and bill all their customers who live in rented accommodation in a timely manner. They will be able to bill their customers as soon as practical after they move into a property, to ensure the customer is aware of their liability for charges and to maximise the prospects of recovering revenue. They will also be able to identify the customer in order to be able to take action to recover outstanding revenue if this becomes necessary.

41. A draft of these regulations is attached at **Annex A** for full public consultation.

Costs and Benefits

42. This is a new and as yet untested policy so the impact it will have is not known. We have carried out an impact assessment of costs and benefits of this regulatory option, which accompanies this consultation. However, we want to explore a broader range of voluntary approaches than those covered in the original impact assessment to see whether it is possible to achieve similar benefits with fewer burdens to business.

43. Costs affect three main groups: landlords will incur costs in gathering and then passing on the required information; undertakers will incur costs in identifying landlords, notifying landlords of the need to provide information and recording that information.

44. We have also made an assessment of the likely range of benefits and invite views on the accuracy of this assessment and the likely benefits outlined in the impact assessment. We hope that the policy will reduce bad debt and the associated chase and financing costs currently passed on to other customers, reducing all water bills and resulting in a net benefit to society.

45. Clearly it is landlords who will be most affected by this measure. To help minimise this, if the provision is brought into force, Water UK (which represents the UK's water companies) will create a single, national website, on which landlords will be able to provide information on the tenants of all of their properties. We hope this will further reduce the burden on landlords by enabling them to input the data into an easy-to-use and secure website, avoiding the need for landlords to use different systems in different parts of the country. The website will be developed during 2012.

46. We therefore hope that the measure will form only a light burden on landlords to provide the information and that it will mean that landlords can easily avoid liability for the water charges. We are conscious, however, of the need for the measure to be fully communicated to landlords in advance and will be exploring the best way to do this as comprehensively as possible. This will include information on websites such as Direct Gov and those aimed at landlords, via water bills, via letting and management agents and with the help of landlords' associations and advice agencies.

UK Government Moratorium Exempting Micro Businesses from Domestic Regulation

47. In March 2011 it was announced that, as far as possible, micro businesses should be subject to no new regulation after 1 April 2011 for three years. Micro businesses are defined as

those which employ fewer than ten people and so may include many private landlords. Initial estimates for the impact assessment suggested that 24% of the costs of this policy would be borne by micro businesses, but further analysis has shown that around 74% of private landlords could be classed as micro-businesses.²

48. In light of this the UK Government is interested in views on whether or how the UK should take forward this regulation in England. Options could include:

- Bringing the regulation into force for all landlords by seeking a waiver of the exemption of micro businesses to new regulation on the basis that the burden that the regulation would place upon landlords is sufficiently small, and the benefits to water companies and water customers is sufficiently high to warrant this.
- Bringing the regulation into force and excluding landlords who are micro businesses from the requirement.
- Delaying the regulation until the moratorium on new regulation has ended in April 2014.

49. If brought into force, this provision will place a small burden on landlords to provide details of their tenants using a user-friendly web portal. On the coming into force of the provision, an undertaker will serve a notice on the landlord requiring him to provide this information. After that, whenever there is a change of occupancy, the landlord must comply with the duty to provide the information. There are many different kinds of landlord including social housing (local authorities, housing associations, housing co-operatives and tenant management organisations) and private landlords. Private landlords include companies that own and manage many or several properties and individuals who may be renting out and managing one or a string of properties. Some landlords may use management companies. Some landlords already pay the water bills themselves and include the cost in the rent paid by tenants. We invite views on the impact this regulation could have on different kinds of landlord in England.

Questions on Option 1

50. We are seeking general views on the draft regulations, but are particularly interested in responses to the following questions:

- **Has the UK Government identified a package of details that would enable undertakers to pursue tenants in the event of non-payment of water bills?**
- **Would any of the listed required details be difficult or costly for a landlord to obtain?**
- **Is 21 days a reasonable amount of time in which to require landlords to provide water undertakers with these details?**
- **Do you think that the impact assessment accurately reflects likely costs to landlords and potential gains by water companies and their customers?**
- **Do you have any additional relevant information around the costs and benefits that the Government can use following the impact assessment?**

² A survey in 2006 found that 74% of private landlords are individuals or couples:
<http://www.communities.gov.uk/documents/housing/pdf/privatelandlordsurvey.pdf>

- **Do you think that Water UK's single web portal for landlords will adequately minimise the burden on landlords to provide details of their tenants?**
- **What will be the best way to communicate the regulations to landlords?**
- **Bearing in mind the high proportion of private landlords likely to be classed as micro businesses, how should the Government proceed with the Regulations?**

Option 2: A Voluntary Approach and Promoting Good Practice

51. Reducing regulation is a key priority for the Coalition Government. Government wishes to reduce the burdens of regulation and bureaucracy to promote growth and innovation. Option 1 would place a burden on private and social landlords who are providers of housing. We want to explore whether we can achieve the same outcome of ensuring that water companies have the details of occupiers, but through a voluntary compliance with a non-regulatory approach.

52. Option 2 is therefore a voluntary approach. Government will ask private and social landlords to voluntarily submit the details of their tenants to water companies to enable them to bill their customers.

53. In Option 1 the provision of data on tenants to water companies is lawful under Section 45 of FLOWMAN because the Act created the legislative power for the transfer of the data. Government believes that the provision of this data voluntarily under Option 2 also complies with the Data Protection Act. The Data Protection Act 1998 allows for disclosure of information to a third party if the third party requires that information to pursue its legitimate interests. Water companies are required to supply water and sewerage services and occupiers are liable for those charges. Water companies need to be able to identify occupiers to charge them for their services and pursue them for payment where they are in arrears. We are aware that many people are wary of being in breach of the Data Protection Act and would work with water companies to allay concerns as part of promoting this as a responsibility for landlords.

54. Government would publicise on Direct Gov and Business Link and via lettings agents that it is the responsibility of landlords to give details of tenants to water companies. We would encourage water companies to publicise the voluntary option via bills and other means.

55. We realise that a voluntary option is inevitably less likely to provide complete data for water companies. We are therefore also interested in exploring whether other organisations which hold data would wish to enter into mutually beneficial data sharing agreements with water companies. No organisation holds a complete set of perfect data but, together, a series of data sharing agreements may provide more comprehensive information than through the regulatory approach. The arrangements may be mutually beneficial because water companies themselves may hold data which is useful to partners. It may be in the legitimate interests of both parties to decide to share data on debtors in order to build up a fuller picture of occupancy and debt.

56. Government believes that if enough organisations came forward to be part of voluntary agreements and they worked effectively, Option 2 could work as effectively as regulation to give water companies the information they need to pursue debtors. We would like respondents to this consultation to give their views on how effective this approach would be and will pursue this option if the case for doing so is made.

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57. However, Government is committed to tackling bad debt to lower customer bills and if we implemented this option and then found, after a period of review, that it was not effective then we would implement the original provision in the Flood and Water Management Act.

58. Data sharing agreements require action by the owners of property and others even though it is the occupier who is liable for water charges. Government is keen that the root causes of water debt should be tackled and that measures aimed at tackling bad debt should be aimed at those who are actually liable for the bill. We think that water companies can take other measures to improve their debt collection and advice. Many companies have strategies for managing the accounts of empty properties, segmenting customers and pursuing those they believe are choosing not to pay and supporting those who cannot pay.

59. Some water companies have formed partnerships with advice agencies which are able to provide customers with holistic advice on their water debts, other debts and other issues like eligibility for benefits. The advice agency is then able to refer customers for a special tariff or payment plan. Their advisors receive special training from the water company on water debt and the water company provides some funding to the advice agency. This approach could be extended so that all water companies take this approach.

60. This option was not fully considered in the impact assessment but we now want to explore a broader range of voluntary approaches than those covered in the original impact assessment to see whether it is possible to achieve similar benefits with fewer burdens to business.

Questions on Option 2

61. We are seeking general views on Option 2, but are particularly interested in responses to the following questions:

- **Could voluntary data sharing agreements for landlords and other holders of occupancy data be successful in tackling the information gap?**
- **What would be the best ways to communicate the responsibility to landlords?**

Final Questions

- **Having reviewed the options, which do you think is likely to be the most effective?**
- **Do you have any other suggestions for tackling bad debt in the water industry?**

Annex A Draft Regulations

STATUTORY INSTRUMENTS

2012 No. [XXXX]

WATER INDUSTRY, ENGLAND AND WALES

The Water and Sewerage Information (Non-owner Occupiers) Regulations 2012

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	<i>1st October 2012</i>

The Secretary of State, in relation to services provided by an undertaker whose area is wholly or mainly in England, in exercise of the powers conferred by sections 144C(4) and (5) and 213(2)(f) of the Water Industry Act 1991⁽³⁾ makes the following Regulations.

Citation, application, commencement and expiry

1. These Regulations—

- (a) may be cited as the Water and Sewerage Information (Non-owner Occupiers) Regulations 2012;
- (b) apply in relation to services provided by an undertaker whose area is wholly or mainly in England;
- (c) come into force on 1st October 2012; and
- (d) cease to have effect on 1st October 2019.

Interpretation

2. In these Regulations—

“the Act” means the Water Industry Act 1991;

“compliance date” means the date when—

- (a) the duty first applies as a result of service of a notice by an undertaker under article [x] of the [Flood and Water Management Act 2010 (Commencement No. x and Transitional Provisions) Order 2012];
- (b) following an interruption of its application in relation to any residential premises, the duty applies in relation to those premises once again;
- (c) the occupier in relation to whom the information specified in regulation 3(1) is given ceases to occupy the premises, but at least one other of the occupiers remains; or
- (d) new occupiers begin to occupy the premises; and

“the duty” means the duty in section 144C(2) of the Act.

⁽³⁾ 1991 c. 56. Section 144C was inserted by section 45 of the Flood and Water Management Act 2010 (c. 29). The power is conferred by sections 144C(4) and (5) of the Water Industry Act 1991 on “the Minister”, and section 144C(8) of that Act defines the Minister for the purposes of section 144C of that Act.

Department for Environment, Food and Rural Affairs

Information to be provided about non-owner occupiers

3.—(1) For the purposes of section 144C(2) of the Act, the information to be given in relation to an occupier of residential premises is—

- (a) full name;
- (b) date of birth; and
- (c) the date the occupier began to occupy the premises.

(2) Paragraph (1) does not apply to an occupier who is under 18.

(3) If the premises are occupied by more than one person, it is sufficient if information is given in relation to only one of the occupiers.

(4) The information in paragraph (1)(c) is not required if the occupier began to occupy the premises before the duty first applied in relation to those premises.

(5) The owner must—

- (a) if it has arranged for information about an occupier to be given to the undertaker—
 - (i) take reasonable steps to inform the occupier that the information has been given to the undertaker; and
 - (ii) tell the undertaker if the owner believes any of the information is false or incomplete; and
- (b) give the undertaker the owner's name and address (unless the undertaker already has this information).

Timing and procedure

4.—(1) The owner must comply with the duty and with regulation 3(5) within 21 days after the compliance date.

(2) The owner's liability under section 144C(3) of the Act is for charges incurred by the occupiers during a non-compliance period.

(3) Subject to paragraph (4), a non-compliance period begins with the compliance date and ends when the owner has complied with the duty and with regulation 3(5).

(4) If the owner does not comply with the duty but the undertaker receives the information specified in regulation 3(1) through some other means, the non-compliance period ends when the undertaker receives—

- (a) that information; and
- (b) the information specified in regulation 3(5)(b).

Change of owner

5.—(1) A person who ceases to own premises is not liable under section 144C(3) of the Act for any charges incurred by the occupiers after the person ceases to be the owner of the premises.

(2) A new owner of premises has the same liability for charges under section 144C(3) of the Act as the previous owner would have had if the previous owner had continued to be the owner.

Exemption from liability

6.—(1) An owner is not liable under section 144C(3) of the Act for any charges incurred by the occupiers if paragraph (2) applies.

(2) This paragraph applies if the owner—

- (a) in compliance with regulation 3(5)(a)(ii), tells the undertaker that information given to the undertaker is false or incomplete; and
- (b) within 21 days after the compliance date ("the 21 day period"), makes reasonable efforts to give the undertaker accurate and complete information in accordance with regulation 3(1).

(3) An owner who takes the steps specified in paragraph (2)(b) after the end of the 21 day period is not liable for any charges incurred by the occupiers after the owner has taken those steps.

Service

7.—(1) An owner may comply with the duty, regulation 3(5) or the steps in regulation 6(2)(b) by—

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- (a) serving notice on the relevant person by post or email; or
 - (b) any other method.
- (2) If the owner serves notice by email, service is effected when an email is sent to an email address which the relevant person—
- (a) previously identified as that person’s email address; or
 - (b) previously used in any communications with the owner.
- (3) In this regulation, “relevant person” means—
- (a) for the purpose of the duty and regulations 3(5)(a)(ii) and (b) and 6(2)(b), the undertaker; and
 - (b) for the purpose of regulation 3(5)(a)(i), the occupier.

Review

- 8.**—(1) Before the end of the review period, the Secretary of State must—
- (a) carry out a review of these Regulations;
 - (b) set out the conclusions of the review in a report; and
 - (c) publish the report.
- (2) The report must in particular—
- (a) set out the objectives intended to be achieved by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved in a less burdensome way.
- (3) In this regulation, “review period” means the period of 5 years beginning with the day on which these Regulations come into force.

Date _____

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply in relation to services provided by an undertaker whose area is wholly or mainly in England. They specify the information to be given pursuant to the duty in section 144C(2) of the Water Industry Act 1991 (“the duty”). An owner of residential premises who does not live in those premises must arrange for the water or sewerage undertaker to be given information about the identity of the occupiers of the premises. The provision of this information will enable the undertaker to recover charges for water or sewerage services. These Regulations make provision about the procedure and timing surrounding the duty.

Under the transitional provisions in [the order commencing section 45(2) of the Flood and Water Management Act 2010], the duty first applies 21 days after the undertaker serves a notice on the owner.

Annex B – Powers under the Flood and Water Management Act to enable regulations in relation to Non-Owner Occupiers

Water and sewerage charges: non-owner occupiers

(1) After section 144B of the Water Industry Act 1991 (charges: charging by volume) insert—

“144C Non-owner occupiers

This section applies to residential premises which are occupied by one or more persons other than the owner (and not by the owner).

The owner must arrange for the undertaker to be given information about the occupiers.

If the owner fails to comply with subsection (2), the occupiers’ liability for charges under this Chapter becomes shared jointly and severally with the owner.

The Minister may make regulations—

about the information to be given under subsection (2);

about timing and procedure in connection with subsection (2) or (3).

The Minister may make regulations exempting owners from liability under subsection (3) where—

(a) information supplied by them is false or incomplete, but

(b) they have taken steps specified by the regulations to ensure its accuracy or completeness.

(6) “Residential premises” means premises that are—

(a) occupied by one or more persons as a home (but not necessarily as their only or main home), and

(b) a “dwelling”, a “house in multiple occupation” or “accommodation for the elderly” within the meaning of paragraphs 1 to 3 of Schedule 4A.

(7) Where a person is the “owner” of premises by virtue of being agent or trustee (see section 219(1)) the duty and liability under this section attach to the principal (and not to the agent or trustee).

(8) “The Minister” means—

(a) the Secretary of State, in relation to services provided by an undertaker whose area is wholly or mainly in England, and

(b) the Welsh Ministers, in relation to services provided by an undertaker whose area is wholly or mainly in Wales (for which purpose section 213 applies with references to the Secretary of State and either House of Parliament being taken as references to the Welsh Ministers and the National Assembly for Wales).”

(2) Transitional provision of an order commencing this section may, in particular, provide for application of the duty in new section 144C(2) to depend on service of a notice by an undertaker.