

**Explanatory Memorandum to The Welsh Government's Charging Guidance to Ofwat (the economic regulator for the Water Industry).**

This Explanatory Memorandum has been prepared by the *Economy, Skills and Natural Resources department* and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

**Cabinet Secretary**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Welsh Government's Charging Guidance to Ofwat (the economic regulator for the water industry).

Lesley Griffiths AM, Cabinet Secretary for Environment and Rural Affairs

12 September 2016

## **1. Description**

The Water Act 2014 received Royal Assent on 14th May 2014. It introduces changes in legislation to enable the water and sewerage sectors to deliver increased resilience, improved customer service and to support economic growth.

The Act also sets out a new framework for the regulation of charging in the water industry. This is necessary to ensure that it remains suitable for the industry once the reforms enabled by the Act have been implemented. Under this new framework Ofwat, the independent economic regulator of the water industry, will be able to issue new binding Charging Rules for the water industry. As such, the Act also requires Ministers to develop new Charging Guidance which Ofwat must have regards to in developing their Charging Rules. The purpose of the Charging Guidance is to ensure that Ofwat's Charging Rules reflect the Welsh Government's policy priorities for the water sector.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

Before issuing guidance under section 144ZE of the Water Industry Act 1991, the Welsh Ministers must lay a draft of the proposed guidance before the Assembly in accordance with section 144ZF of that Act.

Section 144ZF provides that the Welsh Ministers may not issue the guidance until after the period of 40 days beginning with the day on which the draft is laid before the Assembly. If before the end of that period the Assembly resolves that the guidance should not be issued, the Welsh Ministers may not issue it. The 40 day period shall not run through the period of recess or the Assembly's dissolution.

## **3. Legislative background**

Section 38 of the Water Act 2014 (Section 38) was commenced on 6 April 2015 and, inserts new section 144ZE into the Water Industry Act 1991. This imposes new duties on Welsh Ministers to produce Charging Guidance for Ofwat which they must take into account when producing their charging rules for water and sewerage undertakers operating wholly or mainly in Wales.

Section 144ZE provides a duty for the Welsh Ministers to issue and revise high level guidance in relation to Ofwat's charging rules. The guidance relates to the principles to be applied by Ofwat in determining the provisions of rules about charges on relevant undertakers' customers (essentially the rules around what price water and sewerage companies can charge customers in their bills). The guidance sets the framework within which Ofwat must set their charging rules that are binding on the undertakers operating wholly or mainly in Wales.

This Guidance replaces existing charging guidance issued under section 143(6)-(9) of the 1991 Act (as amended by section 4 of the Water Industry Act 1999),

which set the scope for the current charges schemes and is reflected in the water and sewerage charges paid by business and domestic users. Following amendments made by the Water Act 2014, the guidance provisions no longer exist in section 143 of the 1991 Act.

#### **4. Purpose & intended effect of the legislation**

The instrument applies to Wales.

The objective of the guidance is to provide Ofwat (the economic regulator for the water industry) with a strategic steer which they must take into account when producing charging rules for water and sewerage undertakers operating wholly or mainly in Wales.

#### **5. Consultation**

Before issuing guidance the Ministers were required to consult:

- The Secretary of State
- The Consumer Council for Water
- Any relevant undertakers likely to be affected by the proposed guidance
- Any water supply licensees or sewerage licensees likely to be affected by the proposed guidance

In developing the draft guidance the Welsh Government actively engaged with relevant stakeholders before publishing a consultation for the draft guidance

between 24 August and 11 October 2015. A summary of responses is available on the Welsh Government's website <http://gov.wales/consultations/environmentandcountryside/150824-151011-charging-guidance-to-ofwat/?status=closed&lang=en>.

#### **6. Regulatory Impact Assessment (RIA)**

A Regulatory Impact Assessment (RIA) has not been prepared as the amendments have no impact on the costs of businesses