

SL(5)014 – Charging Guidance to Ofwat (the economic regulator of the water sector) 2016

Background and Purpose

This guidance is made by the Welsh Ministers and is issued to Ofwat the independent economic regulator of the water sector. Ofwat must have regard to the guidance when making Charging Rules that apply in areas that are wholly or mainly in Wales.

Procedure

The procedure set out in the enabling act (the Water Industry Act 1991) provides that:

- the Welsh Ministers must not issue the guidance until after the period of 40 days beginning with the day on which the draft is laid before the Assembly, and
- if before the end of that period the Assembly resolves that the guidance should not be issued, the Welsh Ministers may not issue it.

Scrutiny under Standing Order 21.7

The Charging Guidance is not a statutory instrument so the Committee is not reporting under Standing Order 21.2 or 21.3.

The Committee has considered and reported on the Charging Guidance under:

- Standing Order 21.7(i): as subordinate legislation laid before the Assembly;
- Standing Order 21.7(v): as a legislative matter of a general nature within or relating to the competence of the Assembly or the Welsh Minister.

While it is always open to debate whether guidance can amount to legislation, there are many aspects of this guidance that are of interest to the Committee:

- this statutory guidance is made by the Welsh Ministers under powers given to them by primary legislation (the Water Industry Act 1991);
- the Water Industry Act 1991 provides that draft guidance must be laid before the Assembly;
- the guidance cannot be issued by the Welsh Ministers until 40 days have passed since it was laid before the Assembly;



- the Assembly may resolve that the guidance should not be issued (in which case, the Welsh Ministers must not issue the guidance);
- Ofwat must have regard to the guidance when Ofwat issues Charging Rules for water and sewerage undertakers operating wholly or mainly in Wales;
- those Charging Rules are expected to impact on the water bills of consumers.

Given the above, this statutory guidance seems to be sufficiently legislative in character for the Committee to consider under Standing Order 21.7.

Reporting points

The Committee has considered the principles outlined in the guidance to Ofwat, and there are no reporting points with regard to those principles.

The Committee reports that the Charging Guidance is in English only.

Government Response

The Charging Guidance is intended for Ofwat officials only. Ofwat are the economic regulators for the water Industry for England and Wales and are solely located in England, there are no Welsh speakers within Ofwat. The guidance is technical in nature. Welsh Government officials carried out a translation scoring exercise prior to issuing this guidance which recommended that the items be produced in English only.

Legal Advisers

Constitutional and Legislative Affairs Committee

26 September 2016

