



Flood and Water Management Act 2010

2010 CHAPTER 29

PART 2

MISCELLANEOUS

35 Provision of infrastructure

(1) After section 36 of the Water Industry Act 1991 insert—

“PART 2A

REGULATION OF PROVISION OF INFRASTRUCTURE

36A Regulations

- (1) The Minister may make regulations about the provision of infrastructure for the use of water undertakers or sewerage undertakers.
- (2) The regulations may in particular—
 - (a) confer regulatory functions on the Authority;
 - (b) apply provisions of Part 2 with or without modification;
 - (c) make provision similar to a provision of Part 2.
- (3) The regulations must specify the activities to which they apply; in particular, the regulations may—
 - (a) apply to designing, constructing, owning and operating infrastructure, and
 - (b) define “infrastructure”.
- (4) The regulations—
 - (a) may make provision only in relation to projects or works that in the Minister's opinion are of a size or complexity that threatens the undertaker's ability to provide services for its customers, and

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- (b) in conferring powers, must restrict them to projects or works that, in the opinion of the person exercising the power, are of a size or complexity that threatens the undertaker's ability to provide services for its customers.
- (5) Sections 36B to 36D and 36F specify other kinds of provision that the regulations may make; and in those sections “infrastructure project” means a project, or part of a project, in connection with any of the things specified in subsection (3)(a).

36B Tendering

- (1) Regulations under section 36A may—
 - (a) allow the Minister to specify one or more infrastructure projects which must be put out to tender;
 - (b) allow the Authority to specify one or more infrastructure projects which must be put out to tender;
 - (c) allow the Minister to delegate the power under paragraph (a) to the Authority.
- (2) The regulations must prohibit a water undertaker or sewerage undertaker from undertaking an infrastructure project which is to be put out to tender in accordance with the regulations.
- (3) But the regulations may permit or require a water or sewerage undertaker to undertake preparatory work of a specified kind or for a specified purpose.
- (4) The regulations must make provision about the extent to which companies associated with a water undertaker or sewerage undertaker (as defined by the regulations) are permitted to bid in a tender process.
- (5) The regulations must specify the procedure to be followed in a tender process; in particular, the regulations—
 - (a) may require the undertaker to consult the Authority or the Minister about the terms on which an infrastructure project is put out to tender;
 - (b) may specify factors to be taken into account in considering bids;
 - (c) must provide for the water or sewerage undertaker responsible for the tender process to determine which bid to accept (if any).

36C Criteria for tendering

- (1) Regulations under section 36A must specify criteria to be used by the Minister or the Authority in determining whether to exercise a power by virtue of section 36B(1).
- (2) The regulations may—
 - (a) provide that the Authority must consult the Minister before exercising a power by virtue of section 36B(1);
 - (b) require the Authority to publish guidance to be followed by it in determining whether to exercise a power by virtue of section 36B(1).

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36D Designation as an infrastructure provider

- (1) Regulations under section 36A may enable the Minister or the Authority to designate as an “infrastructure provider” a person who appears to the Minister or Authority to be wholly or partly responsible for an infrastructure project that was put out to tender in accordance with regulations by virtue of section 36B.
- (2) The regulations may—
 - (a) confer powers and impose duties on designated infrastructure providers (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act on water or sewerage undertakers),
 - (b) confer powers and impose duties on the Authority, the Minister or any other body with public functions (including any power or duty that is the same as or similar to a power or duty conferred or imposed under or by virtue of this Act in respect of water or sewerage undertakers),
 - (c) relieve water or sewerage undertakers of specified duties to a specified extent,
 - (d) provide for designation to be conditional,
 - (e) provide, or enable the provision of, limits (by reference to place, time or otherwise) on powers and duties conferred under paragraph (a),
 - (f) include provision about enforcement of powers, duties, conditions and limitations, and
 - (g) include provision for variation or revocation of designation.

36E Ministerial responsibility

- (1) In this Part “the Minister” means—
 - (a) the Secretary of State, in relation to infrastructure which is provided or to be provided for the use of one or more English undertakers,
 - (b) the Welsh Ministers, in relation to infrastructure which is provided or to be provided for the use of one or more Welsh undertakers, and
 - (c) the Secretary of State and the Welsh Ministers acting jointly in relation to infrastructure which is provided or to be provided for the use of one or more English undertakers and one or more Welsh undertakers.
- (2) In this section and section 36F—
 - (a) “an English undertaker” means a water undertaker or sewerage undertaker whose area is wholly or mainly in England, and
 - (b) “a Welsh undertaker” means a water undertaker or sewerage undertaker whose area is wholly or mainly in Wales.

36F Cross-border infrastructure projects

- (1) Regulations under section 36A may make provision about cross-border infrastructure projects.

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- (2) In this section “cross-border infrastructure project” means an infrastructure project which—
 - (a) relates to infrastructure in Wales which is for the use of an English undertaker, or
 - (b) relates to infrastructure in England which is for the use of a Welsh undertaker.
- (3) Regulations made by the Secretary of State about cross-border infrastructure projects—
 - (a) may confer functions on the Welsh Ministers, and
 - (b) must require the Secretary of State or the Authority to consult the Welsh Ministers before exercising any power under section 36B(1) to specify projects which must be put out to tender.
- (4) Regulations made by the Welsh Ministers about cross-border infrastructure projects—
 - (a) may confer functions on the Secretary of State, and
 - (b) must require the Welsh Ministers or the Authority to consult the Secretary of State before exercising any power under section 36B(1) to specify projects which must be put out to tender.

36G Regulations: procedure

- (1) Regulations under section 36A may not be made unless a draft has been laid before and approved by resolution of—
 - (a) each House of Parliament, in the case of regulations made by the Secretary of State,
 - (b) the National Assembly for Wales, in the case of regulations made by the Welsh Ministers, or
 - (c) each House of Parliament and the National Assembly for Wales, in the case of regulations made by the Secretary of State and the Welsh Ministers acting jointly.
 - (2) Before laying a draft under subsection (1) the Minister must consult persons who in the Minister's opinion represent interests likely to be affected by the regulations.
 - (3) Section 213 applies to regulations made by the Welsh Ministers under section 36A as it applies to regulations made by the Secretary of State.”
- (2) In section 213(1) of the Water Industry Act 1991 (regulations) for “or 17D(8)” substitute “, 17D(8), 36A ”.

Commencement Information

II [S. 35](#) in force at 1.10.2010 for specified purposes by [S.I. 2010/2169](#), [art. 4](#), [Sch.](#)

Changes to legislation:

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Changes and effects yet to be applied to :

- s. 35(2) words repealed by [2014 c. 21 Sch. 7 para. 145](#)