

Extension of deadline for making representations or objections to the notice, under and in accordance with section 22A(4) of the Water Industry Act 1991 (as amended), of the Water Service Regulation Authority's¹ proposal to impose a penalty on Southern Water Services Limited made on 31 March 2006, from 30 June 2006 to 31 October 2006

1 Background

On 21 October 2005 Southern Water Services Limited ("Southern Water") informed the Water Services Regulatory Authority ("Ofwat")² that it had discovered that it had been mis-reporting its customer service performance to Ofwat and had been failing to achieve standards of performance in customer service set out in the Water Supply and Sewerage Services (Customer Service Standards) Regulations 1989 (as amended) (the "GSS Regulations") and had not been making payments due to customers for those failures as required by the GSS Regulations.

As a result Ofwat and Southern Water jointly appointed KPMG LLP Forensic ("KPMG") to carry out an independent investigation into these irregularities. That investigation is ongoing.

On 31 March 2006 Ofwat issued a notice, under and in accordance with section 22A(4) of the Water Industry Act 1991 (as amended) (the "WIA91"), of its proposal to impose a penalty on Southern Water (the "Notice"). A copy of the Notice is attached at Annex 1.

The Notice states that:

- i) Ofwat proposes to impose a penalty on Southern Water;
- ii) Ofwat is satisfied that Southern Water has failed to achieve standards of performance prescribed under sections 38(2) and 95(2) of the WIA91, namely the standards in the Water Supply and Sewerage Services (Customer Service Standards) Regulations 1989 (as amended) (the "GSS Regulations");

¹ The notice was issued by the then Director General of Water Services (the "Director"). On 1 April 2006 the office of the Director was abolished and replaced by a body corporate known as the Water Services Regulation Authority (section 34 of the Water Act 2003 (the "WA03")). On the same day the functions of the Director were transferred to the Water Services Regulation Authority under section 36 WA03 and the Water Services Regulations Authority Transfer Scheme 2006. Anything done by the Director for the purpose of or in connection with any of his functions and which is in effect immediately before the transfer (such as the Notice) is treated as if done by the Water Services Regulation Authority (Schedule 3, paragraph 6(1) WA03). The transfer of the functions does not affect the validity of anything done by the Director before the transfer takes place (Schedule 3, paragraph 6(2) WA03). The Water Services Regulations Authority is substituted for the Director in any document relating to anything transferred (Schedule 3, paragraph 8).

² In this document the term "Ofwat" is used to mean both the Water Services Regulation Authority after 1 April 2006 and the Director prior to 1 April 2006.

- iii) the proposal to impose a penalty is in respect of Southern Water's failure to achieve standards of performance prescribed under sections 38(2) and 95(2) WIA91, namely the GSS Regulations, at all material times between 1 April 2005 (the date on which Ofwat's power to impose a penalty commenced and from which Ofwat's power to impose a penalty may be exercised) and the date of the Notice (31 March 2006);
- iv) the omissions which, in the opinion of Ofwat, constitute the failures in question and which justify the imposition of a penalty are set out in the Notice. These relate to Southern Water's failure to comply with the standards of performance in customer service as set out in the GSS Regulations;
- v) however, Ofwat requires Southern Water to provide further information as to the extent of the failures to be able to quantify fully the amount of the proposed penalty; Southern Water has undertaken to provide Ofwat with that information;
- vi) it is likely that Ofwat will vary the proposal stated in the Notice once Southern Water has provided information as to the full extent of the failures; if so, Ofwat will be required to give notice, as required by section 22A(5) WIA91, setting out the proposed variation and the reasons for it and allowing a period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made;
- vii) Ofwat is also considering whether Southern Water has or may have contravened conditions of its appointment by providing Ofwat with false information in relation to customer services and whether it would be appropriate to impose a separate penalty on Southern Water in respect of those contraventions; the Notice is without prejudice to any penalty Ofwat may impose or propose to impose, or any other action Ofwat may take in respect of any such contraventions;
- viii) representations or objections with respect to the proposed penalty are to be made by 30 June 2006.

As explained in paragraph 1 (vii) above, Ofwat is also considering whether Southern Water has or may have contravened conditions of its appointment by providing Ofwat with false information. As part of those considerations, on 7 June 2006 Ofwat issued a notice under and in accordance with section 203 W1A91 requiring Southern Water to produce certain documents and furnish information. Southern Water must respond to that notice by 31 October 2006.

2 Southern Water's request for an extension

On 23 June 2006 Southern Water wrote to Ofwat requesting an extension to the deadline for representations or objections from 30 June 2006 as set out in the Notice to 31 October 2006.

The reason Southern Water gave for the request is that some of the actions Southern Water had agreed with Ofwat to undertake had taken longer than anticipated at the outset. Southern Water explained that it would want to refer to the whole scope of such actions in making its representations to Ofwat in respect of the proposed penalty, even though the Notice relates only to the period from 1 April 2005.

Southern Water stated that, nevertheless, these actions are in hand and that it now expects to have completed all of the analysis and to have made the payments to identified customers by the end of September 2006. Southern Water noted that the Notice referred to further information that Ofwat wanted Southern Water to provide and that that information will come from this work. Southern Water explained that in these circumstances it would want its representations to be based on actual delivery and asked that the period for its representations be extended.

Southern Water suggested that as the notice requesting information on Southern Water's mis-reporting, under and in accordance with section 203 WIA91 made by Ofwat on 7 June 2006, requested representations or objections to be made by 31 October 2006 that it would be reasonable and appropriate to extend the deadline in respect of the Notice to 31 October 2006.

3 Ofwat's grant of an extension

Ofwat has been monitoring closely the work that Southern Water and KPMG have been undertaking to provide Ofwat with the further information referred to above. From Ofwat's monitoring and on the basis of the reasons Southern Water set out in its letter of 24 June 2006, Ofwat considers Southern Water's request to extend the deadline for representations or objections in respect of the Notice to 31 October 2006 to be reasonable.

Southern Water has only asked for an extension for itself. Nevertheless, Ofwat considers that it is appropriate to grant the same extension to all parties wishing to make representations or objections.

Ofwat hereby extends the deadline for representations or objections from all parties with respect to the proposal to impose a penalty as set out in the Notice from 30 June 2006 to 31 October 2006.

Representations or objections should be made to Sue Cox, as set out below:

Sue Cox
Ofwat
Centre City Tower
7 Hill Street
Birmingham
B5 4UA

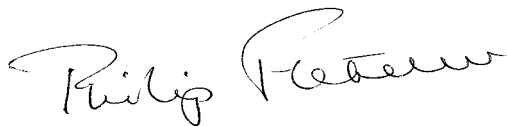
Or by e-mail to sue.cox@ofwat.gsi.gov.uk

Representations or objections, which should be made in writing, should be clearly marked 'Southern Water Proposed Penalty'.

Representations or objections will be placed in our library and made available to the public, unless you have clearly indicated that you do not wish this to happen. In general, Ofwat will honour this request, but there may be circumstances in which, under the Freedom of Information Act 2000, Ofwat would be obliged to disclose responses.

As this extension is being granted after the original deadline for representations or objections, any party which has already submitted representations or objections who wishes to take advantage of the extended deadline should contact Sue Cox as detailed above.

In any event, as set out in the Notice, it is likely that after Southern Water has provided Ofwat with further information on (among other things) its failures to achieve the standards of performance prescribed by the GSS Regulations that Ofwat will vary the proposal stated in the Notice. In the event that Ofwat varies the Notice, Ofwat will be required to give notice, as required by section 22A(5) WIA91, setting out the proposed variation and the reasons for it and to specify a period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made. This will give interested parties further opportunity to make representations or objections.



Philip Fletcher
Chairman
On behalf of the Water Services Regulation Authority
22 August 2006