



WATER ACT 2003
WATER SUPPLY LICENSING

Applying for a Water Supply Licence
Guidance

July 2007

Guidance on applying for a Water Supply Licence

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1. Introduction and outline

1.1 Background

The Water Industry Act 1991 (WIA91)¹ will permit a company that is the holder of a water supply licence (referred to in this guidance as a licensee) to have access² to a water undertaker's³ supply system⁴ to enable the licensee to supply water to eligible premises. Prospective licensees will have to obtain a water supply licence before they can supply water through a water undertaker's supply system in competition with the water undertaker. Prospective suppliers can apply for either of the following:

- A **retail licence** – a water supply licence that authorises the holder to use a water undertaker's supply system for the purpose of supplying water to the premises of its customers ('the retail authorisation'). A retail licence therefore permits the supplier to purchase a wholesale supply of water from a water undertaker and to retail it to customers at eligible premises.⁵
- A **combined licence** – a water supply licence that gives the holder the 'supplementary authorisation' in addition to the retail authorisation. The supplementary authorisation allows the holder to introduce water into a water undertaker's supply system by means of which any particular supply of water to the premises under the licensee's retail authorisation is to take place.⁶

A licensee may apply for a variation to its licence. A retail licensee may apply for a variation so that its licence also gives the supplementary authorisation. A combined licensee may apply for a variation so that its licence gives only the retail authorisation.

Water supply licences apply to the supply of potable water and/or non-potable water.

Section 17A(3) WIA91 sets out the following three requirements that must be satisfied in relation to each of the premises supplied by a licensee:

- the customer's premises are not household premises⁷;

¹ In this guidance, references to WIA91 refer to WIA91 as amended by the Water Act 2003 (WA03).

² The term 'access' refers both to wholesale supplies of water by a water undertaker to a licensee for the purpose of the licensee's making a retail supply of water to the premises of the licensee's customer, and to combined supplies (the introduction by the licensee of water into the water undertaker's supply system in order to make a retail supply of water by the licensee to its customer through the water undertaker's supply system).

³ A 'water undertaker' is a company appointed under section 6 WIA91 to provide water services in respect of a defined geographical area of England and Wales.

⁴ A water undertaker's supply system is defined in section 17B(5) WIA91 for the purposes of the new licensing arrangements as comprising any water mains and other pipes used for the purposes of conveying water from a water undertaker's treatment works to its customer's premises and any water mains and other pipes used to convey non-domestic water from any source to premises that are not connected directly or indirectly to any water mains or pipes connected to those treatment works.

⁵ See section 17A(1), (2) and (4) WIA91.

⁶ See section 17A(5) and (6) WIA91.

⁷ The definition of 'household premises' is set out in Section 17C WIA91.

- when the licensee first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually by the licensee is not less than 50 megalitres (MI),⁸ (the 'threshold requirement');⁹ and
- the premises are not being supplied with water by another licensee.

1.2 Purpose of this guidance

This guidance is statutory guidance under the Water Supply Licence (Application) Regulations 2005 (SI 2005/1638) (the 'Application Regulations'). It should be read alongside the Application Regulations.

This guidance sets out:

- the process for applying for a water supply licence;
- the form and manner of applications;
- the information and documents we will require from an applicant; and
- the criteria we will apply when assessing licence applications.

It covers applications for:

- a retail licence;
- a combined licence;
- a variation of a retail licence to add the supplementary authorisation; and
- a variation of a combined licence to remove the supplementary authorisation.

Other documents that should be read alongside this guidance include WIA91, the statutory instruments and other documents made under it and the following documents:

- standard Conditions of Water Supply Licences;
- guidance on eligibility;
- guidance on access codes;
- guidance on strategic supplies; and
- the customer transfer protocol.

These documents are available in the Water Supply Licensing area of our website.

1.3 Structure of this guidance

The rest of this guidance is structured as follows:

- Chapter 2 and Appendix 1 set out the licence application process.
- Chapter 3 sets out the criteria we will use to assess an application.
- Chapter 4 sets out the information that applicants will be required to submit as part of their application.

⁸ 50 million litres, or 50,000 cubic metres (m³).

⁹ See section 17D WIA91.

- Chapter 5 explains how a licensee should comply with its water supply licence.
- Chapter 6 explains the terms used in this document.
- Appendix 2 sets out the particulars to be contained in a notice of application for a water supply licence, as prescribed by the Application Regulations.
- Appendix 3 sets out the particulars to be contained in a notice of application for variation of a retail licence to a combined licence, also as prescribed by the Application Regulations.
- Appendix 4 contains a copy of the certificate of adequacy.
- Appendix 5 contains guidance to applicants and sponsors on the format and content of a business plan and accompanying verification statements.

This document sets out our understanding of provisions of WIA91 and of statutory instruments and other documents made under it. It is not a substitute for WIA91 or the legal instruments made under WIA91, or for any other legal provision. This document should be read in conjunction with those legal instruments and relevant case law. Anyone in doubt about how they may be affected by WIA91 should seek legal advice.

2. The licence application process

A company that wishes to supply water to customers at eligible premises must apply for a water supply licence. This chapter outlines the steps involved in the application process.

2.1 Pre-application stage

We recommend that prospective applicants contact us to discuss the application process and the information we will require, before a formal application is made. This provides an early opportunity for all parties to raise any significant issues of concern and allow these to be addressed. It also gives applicants the opportunity to discuss and clarify any queries they have before submitting formal applications. We do not intend to make any public statement about these discussions.

Applicants for combined licences should note that under section 24 of the Water Resources Act 1991, abstraction of water from any source of supply without an abstraction licence is an offence. We do not require potential combined water supply licensees to have obtained an abstraction licence before they would be granted a water supply licence. However, we recommend that they seek advice from the Environment Agency before they commence the water supply licence application process. More information is available on the Environment Agency website at www.environment-agency.gov.uk. In addition, the Environment Agency can be contacted via their customer contact centre on 08708 506506.

Prospective applicants for a retail or combined water supply licence should refer to the Water Supply Licensing (WSL) area of our website, www.ofwat.gov.uk. This area is designed to be an initial source of information for prospective licensees. It also includes instructions on how to request further information and a standard application form.

2.2 Application submission – general

WIA91 and the Application Regulations provide for us to process applications for water supply licences. Formal licence applications¹⁰ must be made in writing to us and contain the information set out in Chapter 4. Although our aim is to keep the information requirements to a minimum, we must have enough information to allow us to assess whether the applicant has the appropriate skills and competencies required of a licensee.

We will only accept formal applications; that is those that are complete and contain all the required information. When we are satisfied that a formal application has been received, we will give the applicant written notice of that fact. We are required to send this notice as soon as reasonably practicable after we have decided that a formal application has been made. The written notice will signal the start of the assessment process. We will not commence the process until we have all the necessary information to make our assessment.

¹⁰ All references to a 'formal application' in this guidance should be taken to mean a 'valid application' for the purposes of the Application Regulations.

All applicants (except those applying for a variation of a combined licence to a retail licence) must publish a notice of application within ten working days of the day on which we notify the applicant that a valid application has been made,¹¹ and tell us it has done so. Applicants should publish the notice on their own website (if they have one), or in such other way as the applicant considers appropriate for bringing it to the attention of interested parties. That notice must contain specified particulars.¹² The particulars to be contained in the notice are prescribed in the Application Regulations and are reproduced in Appendices 2 and 3. The notice must state the type of licence, or variation to an existing licence, that the applicant wishes to obtain and it must invite responses in writing, to be directed to us, within 20 working days of the notice having been published on our website.

In addition, we are required to publish a copy of the notice of application on our website, on or as soon as reasonably practicable after the day on which the applicant publishes the notice. We will co-ordinate with the applicant to make sure that as far as possible publication is at the same time. Interested parties will be able to subscribe to our website to receive updates on licence applications. If the applicant does not publish the required notice, we will not proceed further with the application.

We will consider third party responses to the notice when assessing a licence application. Ordinarily, we expect to send copies of those third party responses to the applicant. If the responses raise any substantial concerns we will attempt to resolve these in discussion with the applicant. We do not normally expect to consult further with those third parties that make representations on an application.

As part of the assessment of an application, we must consider whether the applicant has the appropriate level of competency in a number of key areas. These areas include management and finance, and whether the applicant is aware of the technical ability required to hold the type of water supply licence requested. This assessment will be criteria-based (see Chapter 3) and will be made on the information provided by the applicant (see Chapter 4). Other bodies, in particular the Drinking Water Inspectorate (DWI), will play an important role in this assessment.

The working relationship between us and DWI, in respect of all relevant matters, is set out in a Memorandum of Understanding. This is available from our library and on our website. The Memorandum of Understanding is intended to be a high level document outlining how we will work together and does not refer specifically to the licence application process.

2.3 Fees

An applicant must pay a fee to have its application assessed. The application fee is intended broadly to cover the average costs associated with processing each type of application. We will charge a flat fee for each separate type of application, irrespective of its complexity. These fees are prescribed in the Application Regulations:

¹¹ See Application Regulations, regulation 5(3).

¹² See Application Regulations, regulation 5(4) and Schedule 2.

- retail licence – £2,000;
- combined licence – £2,500;
- variation of a retail licence to add the supplementary authorisation – £1350; or
- variation of a combined licence to remove the supplementary authorisation – £550.

The fees are intended to cover only our costs of processing applications. They do not include any provision for the ongoing costs of regulating licensees, or for any assessment made by DWI. DWI will continue to be funded directly from public funds for the foreseeable future. This is consistent with the treatment of DWI's costs related to water undertakers.

The level of fees will be reviewed from time to time to make sure they continue to reflect the average costs of assessing applications.

The revenue from licence application fees will be paid into the Consolidated Fund (ie the Exchequer). Payment should be made to Ofwat by cheque or, preferably, by electronic transfer. Receipts will be issued on request.

An application will not be processed until the appropriate fee has been paid.

2.4 Granting a licence

We expect the formal application process to take up to 60 working days, including the statutory 20 working day consultation period. The process may take longer should we require further clarification or information from the applicant and may take less time in the case of an application for variation from a combined to a retail licence. We would expect that, with experience, we might reduce these timescales. Appendix 1 sets out the process we will follow for each type of licence application.

We expect the process for obtaining a retail licence to be slightly more straightforward than that for obtaining a combined licence. Retail and combined licence applicants will have to demonstrate financial and managerial competency. Combined licence applicants seeking to introduce water into a water undertaker's supply system will also need to satisfy DWI and us that they have sufficient technical expertise and understanding of the regulatory regime governing introductions of water. The technical requirements for prospective retail licensees will be less extensive. However, they will have certain responsibilities and will need to satisfy DWI and us that they are aware of these.

Applicants for both combined and retail licences will be responsible for ensuring that their water is wholesome at the point of supply. Both will therefore need to demonstrate to DWI that they have an understanding of water supply and water quality issues, and that they are aware of the legislation and guidance that affects their work.

DWI will assess licensees' technical competence at two stages. The first stage will be a mainly paper-based assessment that will form part of the licence application process. The second stage, for combined licensees only, will be a detailed technical

assessment at the time when a licensee proposes to introduce treated water into a water undertaker's potable supply system.

Before advising us that the applicant is suitable to be granted a licence, DWI will want to be sure that:

- both retail and combined licence applicants have adequate knowledge of relevant water quality legislation and guidance, and other documents outlining the responsibilities of water suppliers; and
- a combined licence applicant is aware of the level of competency it will need to demonstrate before it is allowed to introduce treated water into the potable public network.

As with our assessment of financial and managerial capability, the assessment process that DWI follows will vary from case to case. DWI will take into account the previous experience and qualifications of the applicant's directors, managers and sub-contractors. It also expects to invite the majority of combined licence applicants for an interview, at which they will have the chance to demonstrate their awareness of the relevant issues. It may also invite retail applicants for an interview.

Under section 17F(7) WIA91, as soon as practicable after granting a licence or varying a licence, we are required to serve a copy of the licence or the licence as varied on the licensee. We must also serve a copy on the Secretary of State, Welsh Ministers, the Chief Inspector of Drinking Water (ie DWI), the Environment Agency, the Consumer Council for Water (CCW), each relevant water undertaker and all other licensees. A copy of the licence or variation of the licence will be retained in our library. We will also maintain a Register of Licensees on our website.

2.5 Action after granting a licence

Once a retail applicant has been granted its licence, it is able to supply water to customers, subject to its entering into an access agreement with the relevant water undertaker for retail supply. Once a combined applicant has been granted its licence, however, it must go through a further stage of assessment before it can introduce potable water into a water undertaker's supply system. In addition, a combined licence holder wishing to abstract water will require an abstraction licence from the Environment Agency under the Water Resources Act 1991.

Standard licence condition 13,¹³ which applies only to combined licensees, prohibits the introduction of potable water into the public supply system until DWI is satisfied with the technical competency of the licensee in respect of the relevant regulatory requirements¹⁴. This assessment does not form part of the licence application process and will be carried out separately by DWI as and when a licensee wishes to

¹³ The full standard licence conditions are available on the Defra website at

<http://www.defra.gov.uk/environment/water/industry/wa03regs/licenceconditions-section17h.pdf>

¹⁴ See sections 67 (standards of wholesomeness), 68 (duties with respect to water quality) and 69 (regulations for preserving water quality) WIA91; Water Supply (Water Quality) Regulations 2000 SI 2000/3184 (as amended by the Water Supply (Water Quality) (Amendment) Regulations 2001 SI 2001/2885) and the Water Supply (Water Quality) Regulations 2001 SI 2001/3911 (W. 323).

start introducing potable water to the public supply system. DWI intends to publish more detail on this second stage assessment in due course.

In carrying out detailed checks, DWI will make sure that combined licensees are subject to the same level of regulation as water undertakers. This approach will minimise the risk of impairment of the quality of the potable water within the public supply system. This detailed assessment will need to be carried out each time a licensee wants to use a new source or treatment works for potable water. It need not be replicated at the licence application stage.

2.6 Suspending or refusing a licence application

We may suspend the licence application process under certain circumstances. Examples would be where the applicant has not provided sufficient details to DWI, or if the applicant needs to take action following representations received by us during the 20 working day notice period. We will tell the applicant why the application process is suspended and invite it to remedy the defects. The onus is on the applicant to provide the necessary additional material and we will not continue to consider the application until this is received. If the defects are remedied successfully, the application and timetable will resume from the point at which it stopped.

Suspending a licence application is not the same as refusing an application. We may refuse an application if for any reason the applicant has not demonstrated that it is suitable to be granted a licence. Examples of situations in which we consider it would be appropriate for us to refuse an application are given below:

- We may refuse a licence if the applicant has failed consistently to provide the required information. We may refuse a licence if, following suspension, an applicant does not respond to a request for additional material within a specified time, which will usually be around 20 working days, or explain why it needs more time to provide the material.
- We may also refuse a licence if the applicant does not demonstrate to us or DWI that it is suitable to be granted a licence. For example, if:
 - there is concern about the ability of the applicant to fulfil regulatory or an undertaker's requirements;
 - the applicant is not aware of its responsibilities or the potential consequences of its actions;
 - the applicant does not have a viable business plan;
 - key personnel are shown to be unsuitable; or
 - the applicant has previously had a licence revoked or application refused and cannot show that it has taken steps to address the reasons for the original revocation or refusal.
- We may refuse a licence if we consider that information supplied is false, misleading or incomplete.

This is not an exhaustive list of reasons for refusal.

Section 17F(4) WIA91 provides that if we propose to refuse an application, we must notify the applicant before we take this action:

- stating that we propose to refuse the application;
- stating the reasons why we propose to refuse the application; and
- specifying the time within which representations or objections to the proposed refusal may be made.

We must consider any representations or objections which are duly made and not withdrawn. The applicant will have the opportunity to make representations or to submit the necessary additional information to us within a specified time, normally ten working days.

If we refuse an application, we will give our reasons for that refusal.

An applicant that has had an application refused is not prohibited from making another application.

2.7 Disputes

As outlined above, interested parties will have the opportunity to make representations on a licence application during the statutory 20 working day period for responses. We will consider all representations that are made and not withdrawn.

If we propose to refuse a licence, we will give the applicant an opportunity to make representations (see section 2.6).

Once a licence is granted, the licensee will have to agree access terms with water undertakers before it can start supplying customers. If these parties are unable to reach agreement on access terms, they will be able to use our formal disputes procedure.¹⁵

2.8 Application for a variation of a licence

A licensee can apply for a variation of its licence if it wants to alter the activities it is permitted to carry out. If it wishes to introduce water into a water undertaker's supply system for the purpose of supplying retail customers, a retail licensee may apply for a variation so that its licence also gives the supplementary authorisation. A combined licensee may apply for a variation so that its licence gives only the retail authorisation if it no longer wishes to introduce water into a water undertaker's supply system.

We will require applicants for a variation to submit the information required for the type of licence that they are seeking. In general, however, the applicant will not need to resubmit information that was submitted in the initial application, unless that original information has changed (in which case that information must be updated).

If we decide to grant a variation, we will serve a copy of the licence as varied on the relevant persons (see section 2.4). In the case of a variation from a retail licence to a combined licence, we will also issue a press notice. If we propose to reject an

¹⁵ Details of our disputes process are available on the WSL area of our website.

application for a variation of a licence, we will follow the procedure set out in section 2.6.

i) From combined licence to retail licence

Combined licensees applying for a variation that will give only the retail authorisation will already have demonstrated to us that they are capable of carrying out retail activities. A licensee may want to vary its licence from a combined licence to a retail licence if it wants only to retail water to its customers' premises (and in doing so will have fewer responsibilities). We will not require applicants to re-submit information unless there has been any change from the original application, and will not in most cases require the applicant to submit a business plan. Applicants will have demonstrated to us as part of the original application that they have the necessary skills and resources to meet the obligations in their licence conditions, and confirmed in their annual Certificate of Adequacy that they continue to do so. The licensee must notify us if there has been any change in its situation since the Certificate of Adequacy was submitted prior to the application to vary its licence.

Licensees applying for a variation from combined to retail will be required to provide information relating to the arrangements for ensuring continuity of supply to existing customers. As a result, we may need to consult the licensee's existing customers and relevant water undertakers and consider any representations made. However, licensees requesting a variation are not required to publish a notice of application, and the 20 working day consultation period will not be required in these circumstances. If we decide to grant or reject a variation, the procedures set out in sections 2.4 or 2.6 will apply.

We expect that the process for assessing an application for a variation of a combined licence to a retail licence will be shorter than the process for assessing other applications. Appendix 1 shows a flow chart for this process.

ii) From retail licence to combined licence

Retail licensees applying for a variation of the licence to give also the supplementary authorisation would, if successful, be taking on additional responsibilities. We will therefore require applicants for such a variation to satisfy the same requirements as if they were applying for a combined licence. The applicant should submit a full business plan, whether or not the information in the plan has changed since the original application. The business plan should be accompanied by the appropriate verification statements, as set out in Chapter 4.

We will not require applicants to re-submit general particulars submitted in support of their original application for the retail licence, unless that information has changed.

Licensees applying for a variation from a retail licence to a combined licence must publish a notice of the application as set out in section 2.2. The particulars that must be contained in the notice are prescribed in the Application Regulations and are reproduced in Appendix 3. Publication of the notice will allow interested parties to make representations or objections.

When applying for a variation of a retail licence to add the supplementary authorisation, DWI will advise us as to the suitability of the applicant from a technical perspective. The two-stage process detailed in sections 2.4 and 2.5 will apply before a successful applicant can begin introducing potable water into the public supply system.

2.9 Certificate of Adequacy

Once a licence has been granted, licensees will be subject to minimal levels of monitoring by us. However, Standard Licence Condition 3¹⁶ provides that the licensee must submit a certificate to us each year, certifying that it continues to have adequate financial, managerial, technical and operational resources to carry out the activities authorised by its licence.

No later than 1 April in each year the certificate of adequacy must be made in the prescribed manner and in the form determined by us. The certificate should be accompanied or supplemented by any verification reports that we may reasonably require. Appendix 4 contains a copy of the certificate of adequacy, as determined by us.

A licensee that is granted a licence in the 30 days preceding 1 April will not be required to submit a certificate of adequacy until 1 April in the following year.

Standard Licence Condition 3 also provides that the licensee must notify us immediately if at any time it becomes aware that it is or will be unable to certify as to the matters set out in the Certificate. It must also notify us if it becomes aware of any actual or potential change of circumstance which would or could prevent it from being able to submit a Certificate of Adequacy if the obligation to do so fell at that time. This would apply, for example, if the licensee became aware that it no longer had sufficient resources to enable it to meet its obligations for the following twelve-month period.

Actual or potential changes of circumstance of which we would expect the licensee to make us aware include major financial changes (for example, default on its debt) or loss of key personnel.

¹⁶ The full standard licence conditions are available on the Defra website at <http://www.defra.gov.uk/environment/water/industry/wa03regs/licenceconditions-section17h.pdf>

2.10 Revocation of a Water Supply Licence

Licensees should have regard to Standard Licence Conditions 10, 11 and 12. These conditions set out the circumstances in which the licence may be revoked by us or the Secretary of State.

2.11 Offence of supplying false information

Under section 207 WIA91 it is an offence for any person (which includes a company), in making a licence application, to make any statement which he knows to be false in a material particular, or recklessly to make any statement which is false in a material particular.

Individuals working for a company guilty of providing false information may also be guilty of the same offence. Under section 210 WIA91, any director, manager, secretary or other similar officer of a company (or any person acting in such a capacity) is guilty of providing false information if the offence was committed with their consent or connivance, or was attributable to any neglect on their part.

3. Assessment criteria

This chapter outlines the criteria against which we will assess completed applications. Each application will be considered on its individual merits.

Our intention is that the application process should be thorough but not overly burdensome. The requirements as set out in this guidance should make sure that prospective licensees know they must prove they are fully competent in all areas before we will grant a licence.

We have not set prescriptive criteria that we will require applicants to fulfil before we will grant a licence. The requirements set out below aim to make sure that any company granted a licence is competent to be a licensee, while recognising that detailed operational issues are best resolved in discussions between water undertakers and licensees.

We believe that this approach will give confidence to water undertakers, customers and other licensees that any company granted a licence has the capacity to be a licensee.

3.1 Company details

In assessing the suitability of an applicant to hold a water supply licence, we will consider whether the applicant has previously had an application refused and/or a licence revoked and whether the reasons for that refusal or revocation are relevant to the current application. We will also take into account whether any directors or managers of the applicant have been associated with companies that have had licences refused or revoked.

There will be a procedural and statutory requirements check before an application can proceed, to make sure that:

- the application fee has been paid;
- the applicant is a limited company within the meaning of the Companies Act 1985; and
- the applicant does not hold an appointment as a water undertaker under WIA91. It may, however, be an associate of a water undertaker although certain restrictions will apply to its operations.

3.2 Financial stability and managerial competency

As part of the application process, we will need to assess applicants' financial and managerial capability to carry out the activities authorised by the type of licence for which they are applying. Applicants for a variation of a retail licence to a combined licence will need to show that they have the financial and managerial resources to carry out the additional activities authorised by a combined licence.

In assessing the applicant's suitability, we will consider whether:

- it has sufficient financial resources to carry out the activities proposed in its business plan;
- it has the capacity to raise new funds in the future;
- it has made provision to finance obligations required under WIA91, including insurance and security arrangements (see Appendix 4 for details);
- its managers, directors, advisors and sub-contractors have the necessary skills, qualifications and experience to enable the applicant to carry out its functions;
- it has adequate knowledge and understanding of the duties of licensees, including:
 - the duties of licensees under WIA91;
 - the Standard Conditions of Water Supply Licences;
 - the security issues involved in being a water supplier;
- it has put systems and procedures in place to:
 - comply with its duties under WIA91;
 - comply with the Standard Conditions of Water Supply Licences;
 - comply with the guidance issued by us under WIA91, such as guidance on eligibility and the Customer Transfer Protocol;
 - communicate emergencies and details of special consumers¹⁷ to the relevant water undertaker;
 - comply with relevant undertakers' existing operational standards¹⁸; and
- it consents to any specific licence conditions that are being considered by us in that particular case.

We have not set prescriptive criteria for assessing these points. We will judge whether an applicant has demonstrated that it has appropriate awareness of the legal framework and of the responsibilities of a licensee. As set out in section 4.2, we will make use of sponsors' expertise in evaluating whether the applicant has the financial and managerial capability to be a licensee.

3.3 Technical competencies

All licensees will need to be aware of their duties and responsibilities as water suppliers. The level of awareness needed will be higher for combined licensees. Retail licensees will not be able to introduce water into the public supply system, so will not need the same level of technical knowledge as combined licensees. However, they will need to have an overall understanding of water supply and water quality issues, and a good understanding of the particular issues that will affect their activities.

DWI will assess whether an applicant has appropriate awareness of the requirements for the type of licence applied for, and will advise us on its assessment of the applicant's competency. This advice will inform our decision on whether to grant a licence. DWI will make a detailed assessment of a combined licensee's

¹⁷ A 'special consumer' is a person or member of a class of persons who regularly requires water urgently on medical or other grounds. These consumers are defined in Standard Licence Condition 5 (10).

¹⁸ Relevant operational standards with which licensees will need to comply are set out in undertakers' access codes, available from them. Applicants should refer to the latest available version of the access code for the company or companies in whose area they aim to operate.

technical competency when the licensee proposes to introduce water into a water undertaker's supply system (see section 2.5).

3.3.1 Prospective combined licensees

An applicant for a combined licence, or an applicant seeking a variation of a retail licence to include the supplementary authorisation, will be required to demonstrate at the application stage that it is aware of its responsibilities with regard to the introduction of water into the public supply system, and that it has the resources to meet them. The applicant will not need to prove at the application stage that it has the ability to comply with these requirements, as this will be covered by DWI's second stage assessment.

Responsibilities of which the applicant should be aware include but are not limited to:

- those detailed in the relevant DWI information direction(s) made under section 208 WIA91;
- the implications of sections 18, 19, 67-70, 86, 202 and 208 WIA91 and the associated Water Supply (Water Quality) Regulations;¹⁹
- the implications of the Water Supply (Water Fittings) Regulations 1999;²⁰
- the technical competency required to operate and manage a water treatment works capable of treating its source water, if applicable; and
- the need for continual water quality monitoring (in particular for new sources), if applicable.

Applicants will also need to satisfy DWI that they have adequate knowledge of the following:

- the role of DWI;
- the regulatory requirement to provide wholesome water;
- the definition of water unfit for human consumption;
- the penalties for supplying water unfit for human consumption;
- drinking water safety plans;²¹
- the requirement to meet existing operational standards as set by the water undertaker;
- the potential impact of mixing waters of different quality;
- treatment processes;
- approved products and processes;²²
- the likely impact of their activities on the hydraulics of the supply system and resulting water quality issues;

¹⁹ The Water Supply (Water Quality) Regulations, 2000 No.3184, amended by SI 2001 No.2885, in England; Water Supply (Water Quality) Regulations 2001, SI 2001 No.3911, in Wales, and subsequent amendments as appropriate.

²⁰ The Water Supply (Water Fittings) Regulations 1999, SI 1999/1148, as amended by the Water Supply (Water Fittings) (Amendment) Regulations 1999, SI 1999/1506, and subsequent amendments as appropriate.

²¹ See DWI Information Letter 06/2004 for more information.

²² 'List of approved products and processes', DWI, December 2004 (amended February 2005), or latest version.

- the circumstances in which they are required to notify water undertakers, for example those identified in the Water Undertakers (Information) Direction 2004; and
- the relevant security and emergency measures required;²³ licensees may sub-contract the implementation of these plans, but will need an understanding of the situations that can arise and of the potential need for water undertakers to communicate directly with the licensee's customers.

3.3.2 Prospective retail licensees

Applicants for a retail licence will need to have an overall understanding of water supply and water quality issues, to make sure that licensees' work does not have a detrimental effect on the undertaker's supply system. They will also need to be aware of the role of DWI and of their responsibilities under the relevant sections of WIA91 and the Regulations, including:

- the regulatory requirement to provide wholesome water;
- the definition of water unfit for human consumption;
- the penalties for supplying water unfit for human consumption;
- the circumstances in which they are required to notify water undertakers, for example those identified in the Water Undertakers (Information) Direction 2004; and
- the relevant security and emergency measures required;²⁴ licensees may sub-contract the implementation of these plans, but will need an understanding of the situations that can arise and of the potential need for water undertakers to communicate directly with the licensee's customers.

3.4 Variation from a combined licence to a retail licence

Combined licensees applying for a variation that will give only the retail authorisation will already have demonstrated to us that they are capable of carrying out retail activities, so their knowledge of the issues set out in section 3.3.2 will not need to be reassessed. They will, however, need to demonstrate:

- that they have made arrangements for ensuring continuity of supply to their customers; and
- if appropriate, that they have discussed with relevant persons how to address strategic supply implications.²⁴

²³ The necessary security and emergency arrangements with which licensees will need to comply are set out in undertakers' access codes. Applicants should refer to the latest available version of the access code for the company or companies in whose area they aim to operate. They should also be aware that they will need to comply with the Security and Emergency Measures (Licensed Water Suppliers) Direction 2006.

²⁴ Refer to our Strategic supplies guidance published December 2005 [http://www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/AttachmentsByTitle/wsl_strategic_supplies_guidance.pdf/\\$FILE/wsl_strategic_supplies_guidance.pdf](http://www.ofwat.gov.uk/aptrix/ofwat/publish.nsf/AttachmentsByTitle/wsl_strategic_supplies_guidance.pdf/$FILE/wsl_strategic_supplies_guidance.pdf).

4. Information required for assessment

This chapter sets out the information applicants will be required to submit in support of an application.

An application for a licence must be made in writing to us, dated and signed on behalf of the applicant. It must contain the following:

- general particulars (see section 4.1);
- information demonstrating financial stability and managerial competency (see section 4.2); and
- information demonstrating understanding of the required technical competencies (see section 4.3).

The application will be assessed against the criteria set out in Chapter 3 above.

4.1 General particulars

The applicant must provide the following, unless it is applying for a variation to a licence and the information has not changed since the original application:

- the registered name, number and office of the applicant;
- details of the corporate structure of the group of which the applicant is a part including a copy of the organisation structure;
- particulars of any relationships the applicant has with existing undertakers or licensees;
- the name of the person dealing with the application, his or her position, telephone, fax numbers and e-mail address;
- whether the application is for a retail licence, a combined licence or a variation of a licence;
- the date when the applicant wishes the licence or variation to take effect;
- the names and addresses of the applicant's directors and Managing Director/Chief Executive Officer;
- details of any of those persons' unspent criminal convictions;²⁵
- a declaration to the effect that all directors of the applicant are fit and proper persons for the purposes of the Companies Act 1985;
- details of any unspent corporate criminal convictions against the applicant and any parent/holding or associate company;
- a declaration as to whether any director or manager of the applicant has previously been a director or manager of a company that has previously had a water supply licence revoked; and
- an electronic version of the draft notice of application (where applicable) for our website.

²⁵ Under the Rehabilitation of Offenders Act 1974, criminal convictions can become spent or ignored after a rehabilitation period. The rehabilitation period varies depending on the sentence or order imposed by the court. Custodial sentences of more than two and half years can never become spent. Lesser sentences become spent after fixed periods from the date of conviction.

4.2 Financial stability and managerial competency

Applicants will need to demonstrate that they have the financial and managerial capability to be granted a licence.

The applicant should provide the following items, unless it is applying for a variation to a licence and the information has not changed since the original application:

- the preceding three years' audited statutory accounts and annual reports, if available;
- for all applicants apart from those applying for a variation from a combined to a retail licence, a business plan and accompanying verification statements. The business plan should include information on the applicant's strategy, finances and management, including CVs for key personnel, and should set out the assumptions underlying its projections. We will set out from time to time the information that should be included in the business plan and the verification statements that we expect to accompany it. All financial statements provided to support the business plan should be set out on a quarterly basis. Appendix 5 contains a list of our current requirements, which we will revise as necessary as the regime develops. The business plan must include:
 - the estimated cost as quoted by an appropriate insurance company²⁶ of acquiring product and public liability insurance at an appropriate level (this is explained further in our access code guidance);
 - the estimated cost of necessary security and emergency arrangements;²⁷ and
 - statements from the applicant's financial backers and from a sponsor who can assist the applicant in demonstrating its financial and managerial capability (see Appendix 5 for details). These statements should be provided on headed paper and signed by the relevant parties;
- for applicants for a variation from a combined to a retail licence, details of any changes in key personnel since the original application, and CVs for those key personnel that have joined the company, its advisors or subcontractors since then (see Appendix 5 for details). We will not usually require applicants for a variation from a combined to a retail licence to submit a business plan, but may do so if we believe that this will help the applicant to demonstrate that it is fully competent to hold a retail licence. This might be the case, for example, if a combined licensee that sought to be active in a small local area decided to abandon being a combined licensee to become a much larger retail only licensee;
- full details of the systems and procedures that the applicant has in place to:
 - comply with its duties under WIA91;
 - comply with the Standard Conditions of Water Supply Licences;
 - comply with the guidance issued by us under WIA91;
 - communicate emergencies and details of special consumers²⁸ to the relevant water undertaker; and

²⁶ What is an 'appropriate' company in any given case will depend on the size of the applicant and the level of insurance applied for. The onus is on the applicant to prove that its insurance is provided by an appropriate company that is authorised by the Financial Services Authority.

²⁷ The necessary security and emergency arrangements with which licensees will need to comply are set out in water undertakers' access codes.

- comply with relevant undertakers' existing operational standards;²⁹ together with details of how those systems and procedures will be tested if necessary (for example, applicants' ability to transfer data flows via e-mail will need to be tested to make sure they can comply with the Customer Transfer Protocol). This information should be provided in a table;³⁰
- a declaration by a director (on behalf of the applicant) that the directors are aware of the responsibilities of licensees under WIA91, including responsibilities in relation to security issues under section 208 WIA91;
- a declaration by a director (on behalf of the applicant) that the applicant, if granted a licence, will work positively with the CCW. This requirement is intended to make the applicant aware of the CCW and that they will need to work together;³¹ and
- an undertaking from any parent company that it will not strip the licensee of any assets required for designated strategic supplies.

Our assessment of whether the applicant has sufficient financial and managerial resources will be based largely on the assessment of those matters by the applicant's sponsor and on the statement from its financial backers (see Appendix 5). We will make our own assessment of whether the applicant's knowledge and procedures are adequate to fulfil its responsibilities under the WSL regime.

We have not set prescriptive information requirements for our assessment of whether the applicant has adequate knowledge and understanding of the issues set out in section 3.2. The information we need in order to decide whether an applicant can demonstrate adequate knowledge will vary from case to case. We will use a combination of the following:

- information on the qualifications and previous experience of the applicant's directors, Managing Director/Chief Executive Officer and other key personnel or sub-contractors who will be involved in the licensed activity;
- information on the systems and procedures that the applicant has put in place, as set out above; and
- the overall quality of the submission.

We expect that in some cases, the previous experience of key personnel, combined with details of the applicant's systems and procedures (as set out above) will be sufficient to demonstrate that the applicant has adequate knowledge of the responsibilities of a licensee. In other cases, such as new entrants, we may need

²⁸A 'special consumer' is a person or member of a class of persons who regularly requires water urgently on medical or other grounds. These consumers are defined in Standard Licence Condition 5 (10).

²⁹ Relevant operational standards with which licensees will need to comply are set out in water undertakers' access codes. Applicants should refer to the latest available version of the access code for the company or companies in whose area they aim to operate.

³⁰ Refer to the Customer Transfer Protocol published in November 2005.

³¹ The CCW has a duty to represent and provide information to consumers, including those supplied by a licensed water supplier. Sections 27 and 29 WIA91 set out the CCW's powers and duties. Applicants should be aware that under section 27H (1), the CCW will be able to direct licensees to provide information that it requires for the purpose of carrying out its functions. Further information on the CCW's role is available on its website, www.ccwater.org.uk

further evidence. If necessary, we will invite applicants to a meeting to give them the opportunity to demonstrate their knowledge.

4.3 Technical competencies

4.3.1 Prospective combined licensees

Following its first stage assessment, DWI will advise us whether or not an applicant for a combined licence, or a variation from a retail to a combined licence, is aware of its responsibilities with regard to the introduction of potable water into the public supply system. In addition in the case of both potable and non-potable supplies, potential licensees should be aware of the likely impact of their activities on the hydraulics of the system and resulting water quality issues.

As set out in section 2.4, the prospective licensee should be able to demonstrate that it, and/or its sub-contractor(s), has appropriate knowledge of the issues set out in section 3.3.1. DWI will also want to be sure that the applicant is aware of the level of competency it will need to demonstrate before it is allowed to input treated water into the public network. This may be subject to a satisfactory interview.

The applicant will not need to provide rigorous proof at the application stage that it has the ability to comply with these requirements, as this will be covered by DWI's second stage assessment.

Relevant documents of which the applicant should be aware include the following:

- WIA91 – especially sections 18, 19, 67-70, 86, 202 and 208;
- Water Supply (Water Quality) Regulations;³²
- Water Supply (Water Fittings) Regulations 1999;³³
- Those detailed in the relevant DWI information direction(s) made under section 208 WIA91;
- All relevant guidance issued by DWI. The 'Competition' section of DWI's website, www.dwi.gov.uk, lists and provides links to all guidance of which applicants should be aware.

4.3.2 Prospective retail licensees

The applicant should be able to demonstrate that it has adequate knowledge of the issues set out in section 3.3.2. For some of these requirements, for example knowledge of the relevant security and emergency measures required, the applicant may be able to fulfil this requirement by showing that it has access to advisors with adequate knowledge of these issues.

³² The Water Supply (Water Quality) Regulations, 2000 No.3184, amended by SI 2001 No.2885, in England; Water Supply (Water Quality) Regulations 2001, SI 2001 No.3911, in Wales, and subsequent amendments as appropriate.

³³ The Water Supply (Water Fittings) Regulations 1999, SI 1999/1148, as amended by the Water Supply (Water Fittings) (Amendment) Regulations 1999, SI 1999/1506, and subsequent amendments as appropriate.

Because retail licensees will have a responsibility to supply wholesome water, applicants for a retail licence, or their advisors, should be able to demonstrate awareness of the relevant documents set out in section 4.3.1.

As in the case of prospective combined licensees, DWI's approval of the application may be subject to a satisfactory interview.

4.4 Variation from a combined licence to a retail licence

Combined licensees applying for a variation that will give only the retail authorisation will already have demonstrated to us that they are capable of carrying out retail activities, so they will not need to resubmit the information set out in section 4.3.2 unless this has changed since its original application. They will however need to provide the following additional information that was not required as part of the original application process:

- information concerning arrangements ensuring continuity of supply to its customers; and
- evidence of their discussions with relevant persons on how to address strategic supply implications, if applicable.³⁴

³⁴ Refer to the strategic supplies guidance published in December 2005.

5. Compliance with the water supply licence

This section sets out how a licensee should comply with its licence.

Once a licence has been granted, the licensee must comply with the standard licence conditions.

As set out in standard licence condition 8, licensees should keep us informed of any significant changes to the ownership and operation of the licensee. These may include changes of ownership of the licensee or parent company of the licensee, changes in key personnel and any significant changes in the business plan submitted to support the application.

We do not prohibit any individual from being a director of both a water undertaker and any associate licensee. We do, however, consider that directors must be aware of their companies' duties under the standard licence conditions and of their own fiduciary and other duties to their companies; it is the responsibility of the directors themselves to make sure that conflicts of interest do not arise and that the licensee complies with its standard licence conditions (this guideline deals solely with the conduct of the licensee). For example, information acquired from a water undertaker during the course of negotiating an access agreement by the director in his capacity as director of a licensee may not be used by him in his capacity as a director of the water undertaker, save to the extent that standard licence condition 2 otherwise allows. Where it appears to us that information is being or is likely to be misused in breach of the standard licence conditions (in the case of a licensee) or Condition R (in the case of a water undertaker) we will consider whether it is appropriate to use our enforcement powers under section 18 WIA91 to secure compliance with the condition in question, for example by requiring further separation between the licensee and the water undertaker.

Whilst we do not prohibit individuals from being a director of both a water undertaker and any associate licensee we would carefully consider a licence application which proposed a Board of directors that already all held posts with the water undertaker. For example, this could include requiring the applicant to provide details of its compliance procedure. We will review this policy in the light of experience as the market develops.

We require every licence applicant that is related to a water undertaker to clearly illustrate in its application how it proposes to make sure that in the case of shared directorships conflicts of interest will be avoided.

An associate licensee may use the skills and experience of staff and other resources employed by the water undertaker only where the service provided by those staff or using those resources is properly charged and accounted for between the licensee and the water undertaker. For example, a licensee may use staff employed by the regulated business (including during the application stages of the licensing process) or buildings, equipment and other resources.

Any service to a licensee should be clearly illustrated in the financial records of the licensee and needs to comply with Regulatory Accounting Guideline 5, standard licence condition 7 (licensees) and Condition of Appointment R5 (water undertakers).

We require every applicant for a water supply licence that is related to a water undertaker clearly to illustrate in its licence application how it proposes to make sure appropriate charging of services between it and the associated water undertaker.

6. Glossary of defined terms

There follows a brief description of some of the terms used in the WSL regime. Readers should refer to WIA91 for precise statutory meanings.

Abstraction licence: the authorisation granted by the Environment Agency to allow the removal of water from a source.

Access: The wholesale supply of water by a water undertaker to a licensee for the purpose of making a retail supply of water to the premises of the licensee's customer; and the introduction of water by the licensee into a water undertaker's supply system for that purpose (common carriage).

Access agreement: An agreement between a water undertaker and a licensee for access by a licensee to a water undertaker's supply system pursuant to the Retail Authorisation and/or Supplementary Authorisation.

Access code: A water undertaker's document that sets out all principal aspects of access to its supply system and the terms and conditions on which it will grant access to its supply system by a licensee. The access code comprises the standard terms and conditions common to all water undertakers and the terms and conditions specific to that water undertaker.

Access terms: The terms under which a water undertaker and a licensee agree access to a water undertaker's supply system.

Application fee: Fee charged to recover the administrative costs of processing the application.

The Authority: The Water Service Regulatory Authority (also known as Ofwat).

CCW: The Consumer Council for Water (also known as WaterVoice).

Certificate of Adequacy: A statement from the licensee that it continues to have adequate resources and competencies to meet the obligations in its water supply licence for at least 12 months.

Combined Licence: A Retail Licence with the Supplementary Authorisation, authorising the holder to introduce water into a water undertaker's supply system and to retail that water to a customer's eligible premises (section 17A(6) WIA91).

Combined supply: A supply made pursuant to a combined licence.

Conditions of Appointment: The requirements and obligations that appointed water undertakers must meet. These are set out in their individual instruments of appointment.

Customer Transfer Protocol (CTP): Processes and procedure for water undertakers and licensees to follow when a customer's eligible premises is transferred from one supplier to another.

Drinking water safety plans: Preventative plans encompassing all steps in water protection from catchment to the consumer. See DWI Information letter 06/2004 (available on DWI website) for more information.

DWI: The Drinking Water Inspectorate, responsible for regulating public water supplies in England and Wales. DWI is responsible for assessing the quality of drinking water, taking enforcement action if standards are not being met, and appropriate action when water is unfit for human consumption.

Eligible premises: Premises that satisfy the eligibility requirements in section 17A(3) WIA91. Each of the following three requirements must be satisfied in relation to each of the premises in order for a customer's premises to be eligible:

- The customer's premises must not be 'household premises' (as defined in section 17C WIA91).
- When the licensee first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually by the licensee must be not less than 50 megalitres (the 'threshold requirement', section 17D WIA91).
- The premises may only be supplied by one licensee (but may also be supplied by one or more water undertakers).

Instrument of Appointment: An appointment made by the Secretary of State or Ofwat for a company to provide water or sewerage services in part of England or Wales. The Instrument of Appointment imposes conditions on the relevant company which Ofwat enforces.

Licensee: A company holding either a retail licence or a combined licence; also referred to as a licensed water supplier.

Non-potable water: Water not intended for domestic or food production purposes.

Potable water: Water for domestic and food production purposes which is wholesome at the time of supply. This is defined in section 68 of WIA91 and section 4 of the Water Supply (Water Quality) Regulations.

Relevant undertaker: The relevant undertaker is the water undertaker (see below) in whose area of appointment the licensee operates or proposes to operate.

Retail authorisation: An authorisation to a company to use a water undertaker's supply system for the purpose of supplying water to the eligible premises of customers of the company (section 17A(2) WIA91).

Retail licence: A water supply licence giving the holder the retail authorisation, entitling the holder to purchase wholesale a supply of water from the water

undertaker and to supply it retail to a customer's eligible premises (section 17A(2), 17A(4) WIA91).

Special consumers: A person or member of class of persons who regularly requires water urgently on medical or other grounds. These consumers are defined in Standard Licence Condition 5.

Standard conditions of water supply licences: The standard terms and conditions of Water Supply Licences determined and published by the Secretary of State (for the Environment Food and Rural Affairs) pursuant to section 17H WIA91.

Strategic supplies: An introduction of water is a strategic supply if, without the introduction being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers. The 'trigger' for whether a supply can be designated as strategic is contained in sections 66G(10) and 66H(10) WIA91.

Supplementary authorisation: An authorisation to a company to introduce water into a water undertaker's supply system for the purpose of making a retail supply of water to a customer. This term is defined in section 17A(5) WIA91.

Supply system: Any water mains and other pipes used for the purposes of conveying potable water from a water undertaker's treatment works to its customer's premises and any non-potable networks that are not connected to any potable system. This term is defined in section 17B(5) WIA91.

Treated water: Water of a suitable quality for introduction into the potable water distribution system and which meets regulatory requirements.

Water Fittings Regulations: The Water Supply (Water Fittings) Regulations 1999 (SI 1999/1148, amended by SI 1999/1506 and SI 2005/2035). These Regulations replaced the Water Byelaws in England and Wales and are largely enforced by the water undertakers.

Water Quality Regulations: The Water Supply (Water Quality) Regulations 2000 (SI 2000/3184, amended by SI 2001/2885, SI 2002/2469 and 2005/2035) for supplies made using water undertakers' supply systems wholly or mainly in England and the Water Supply (Water Quality) Regulations 2001 (SI 2001/3911 (W. 323) amended by SI 2005/2035) for supplies made using water undertakers' supply systems wholly or mainly in Wales. The DWI enforces these Regulations.

Water supply licence: A licence granted to a company giving it the retail authorisation, or both the retail authorisation and the supplementary authorisation (section 17A(1) WIA91).

Water undertaker: A company appointed under section 6 WIA91 to provide water services to a defined geographic area of England and Wales and which owns the supply system and other infrastructure.

Wholesale supply: Supply of water to a licensee by a water undertaker for the purposes of retail by the licensee to its customer's premises.

WIA91: The Water Industry Act 1991 (as amended by the Water Act 2003).

Appendix 1: Summary of the Water Supply Licence application process

This summary should be read in conjunction with the flow charts of the application process at the end of this appendix.

1. Pre-application stage – **Ofwat, applicant** [*at applicant's discretion*]

The applicant should refer to the water supply licensing area of our website, www.ofwat.gov.uk, for information and details on how to request an application form. We will offer advice if the applicant wishes, before the formal application is submitted. Informal discussions will allow us to explain our information requirements, if necessary, and any particular concerns that the applicant will need to address in its application.

2. Prepare a formal application – **applicant** [*at applicant's discretion*]

The applicant should use early discussions with us to assist in the preparation of a formal licence application. When preparing an application the applicant should make sure that it has provided all of the necessary information (as set out in this guidance). An incomplete submission does not contain all of the information required and cannot be accepted as a formal application.

3. Submit formal application to Ofwat – **applicant** [*at applicant's discretion*]

The applicant should submit the formal application, with the relevant application fee, to us. We will check whether the application contains all of the information required. Once we are satisfied that a valid application has been made, we will notify the applicant in writing (ordinarily by e-mail).

4. Publish a notice – **Ofwat, applicant**

All applicants (except those applying for a variation of a combined licence to a retail licence) must publish a notice of application within ten working days of the day on which we notify the applicant that a valid application has been made,³⁵ and tell us it has done so. Applicants should publish the notice on their own website (if they have one), or in such other way as the applicant considers appropriate for bringing it to the attention of interested persons. That notice must contain specified particulars.³⁶ The particulars to be contained in the notice are prescribed in the Application Regulations and are reproduced in Appendices 2 and 3. The notice must state the type of licence, or variation to an existing licence, that the applicant wishes to obtain and it must invite responses in writing, to be directed to us, within 20 working days of the notice having been published on our website.

In addition, we are required to publish a copy of the applicant's notice of application on our website, on or as soon as reasonably practicable after the day on which the

³⁵ See Application Regulations, regulation 5(3).

³⁶ See Application Regulations, regulation 5(4) and Schedule 2.

applicant publishes the notice. We will liaise with the applicant to make sure that publication is at the same time.

5. Assessment of the application – **Ofwat** [*up to 40 working days*]

We will work with the applicant to clarify what is needed to satisfy the criteria for granting a licence. We expect that the assessment process will take less time when considering an application for the variation of a combined licence to a retail licence.

5a. Role of DWI – **Ofwat, DWI**

Where an applicant applies for a combined licence it will be required to demonstrate to DWI that it is aware of its responsibilities with regard to the introduction of potable water into the public supply system and that it has the resources to meet these. Applicants for a retail licence will also need to satisfy DWI that they are aware of their responsibilities. We will work closely with DWI during the licence application process. This working relationship is set out in a Memorandum of Understanding between the two organisations.

DWI estimates that the assessment of technical competency, ie the ‘first stage’ assessment, to gain a water supply licence should take no more than 20 working days and will be undertaken in parallel with our assessments.

5b. Consider responses to the notice of application – **Ofwat**

Before deciding whether to accept or reject an application, we must take account of any representations or objections made with respect to the application in response to the published notice of application. If substantive objections are raised, we will attempt to resolve them as quickly as possible; if necessary we will discuss the objections with the applicant.

6. Proposal to refuse an application – **Ofwat, applicant** [*up to 20 working days*]

If we propose to refuse the application, for whatever reason, we will give the applicant notice to that effect; setting out the details required by section 17F(4) WIA91. We will state the reasons why we are proposing to refuse the application and will invite representations or objections with respect to the proposed refusal within a specified time. We will specify a reasonable time for making representations or objections, which we expect to be ten working days. We will consider any representations or objections that are duly made and not withdrawn. If, following representations and further evaluation, we are still not satisfied with the application, we will reject it. We will notify the applicant in writing of our decision, setting out our reasons.

7. Granting a licence – **Ofwat** [*days 50-60*]

Once we and the DWI are satisfied that the applicant is suitable to be granted a licence, we will inform the applicant. As soon as is practicable after granting a licence or varying a licence, we are required to serve a copy of the licence or the licence as varied on the licensee. We must also serve a copy on the Secretary of

State, Welsh Ministers, the DWI, the Environment Agency, CCW, each relevant water undertaker and all other licensees.

A copy of all licences that have been granted will be held in our public Register of Licensees, which will be available on our website at www.ofwat.gov.uk and in our library (telephone 0121 625 1300).

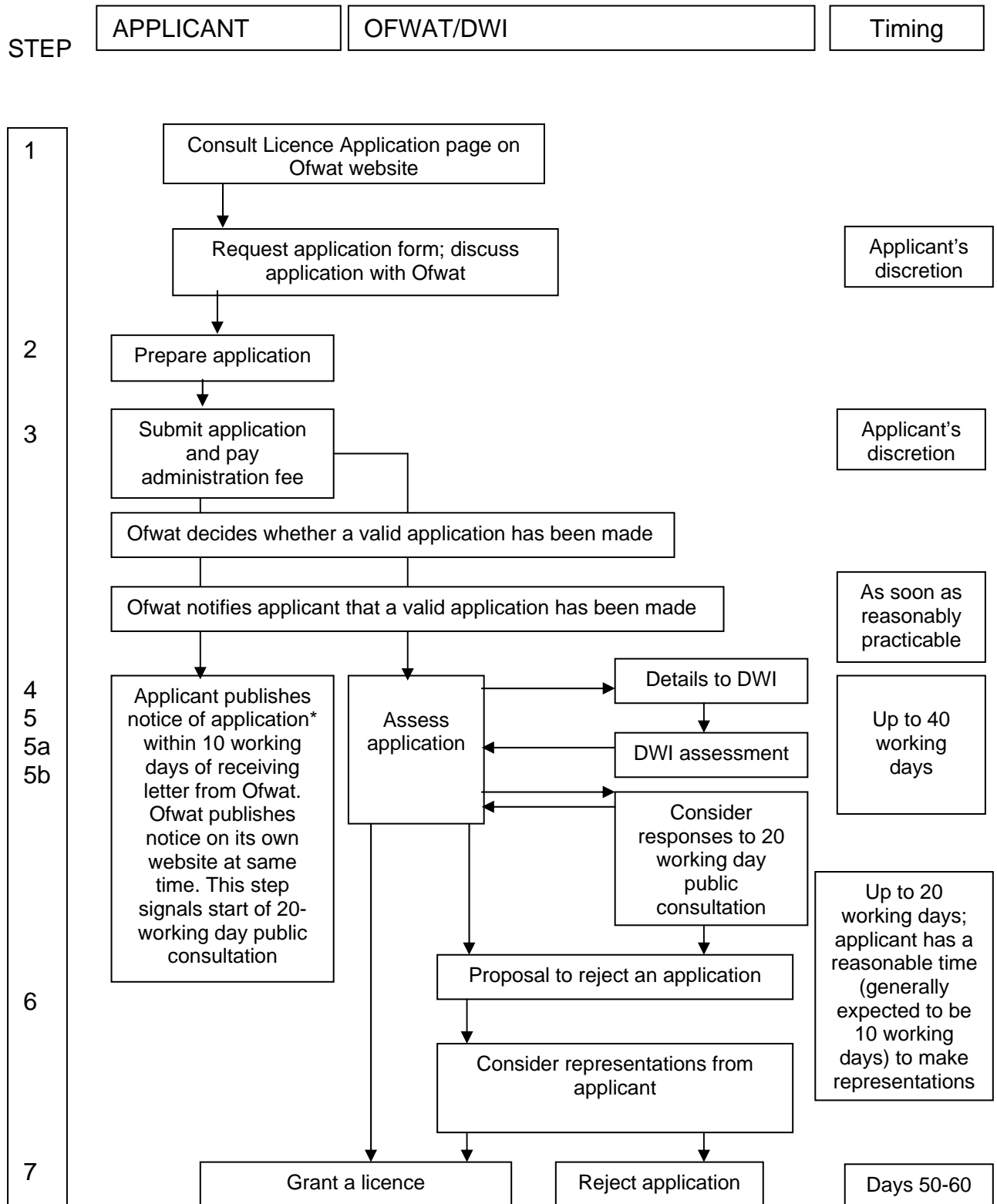
8. Permission to begin introduction of potable water – **DWI** *[day 60 onwards]*

Under Standard Licence Condition 13, a combined licensee is not permitted to introduce water in pursuance of its licence into any relevant water undertaker's relevant supply system until DWI has conducted a satisfactory audit in relation to the relevant regulatory standards³⁷ applicable to the water source and treatment works used by the licensee in relation to that introduction. This detailed assessment will need to be carried out each time a licensee wants to use a new source or treatment works for potable water. This stage is outside of the licence application process.

DWI expects to carry out a detailed assessment of new treatment works within 20 working days of notification that the works are completed and ready to provide fully-treated water. Reporting of the findings from this assessment will be expected to meet DWI's internal 'Code for Enforcement' targets. This is currently 20 working days for a draft report with a final report a further 20 working days from receipt of any additional information requested.

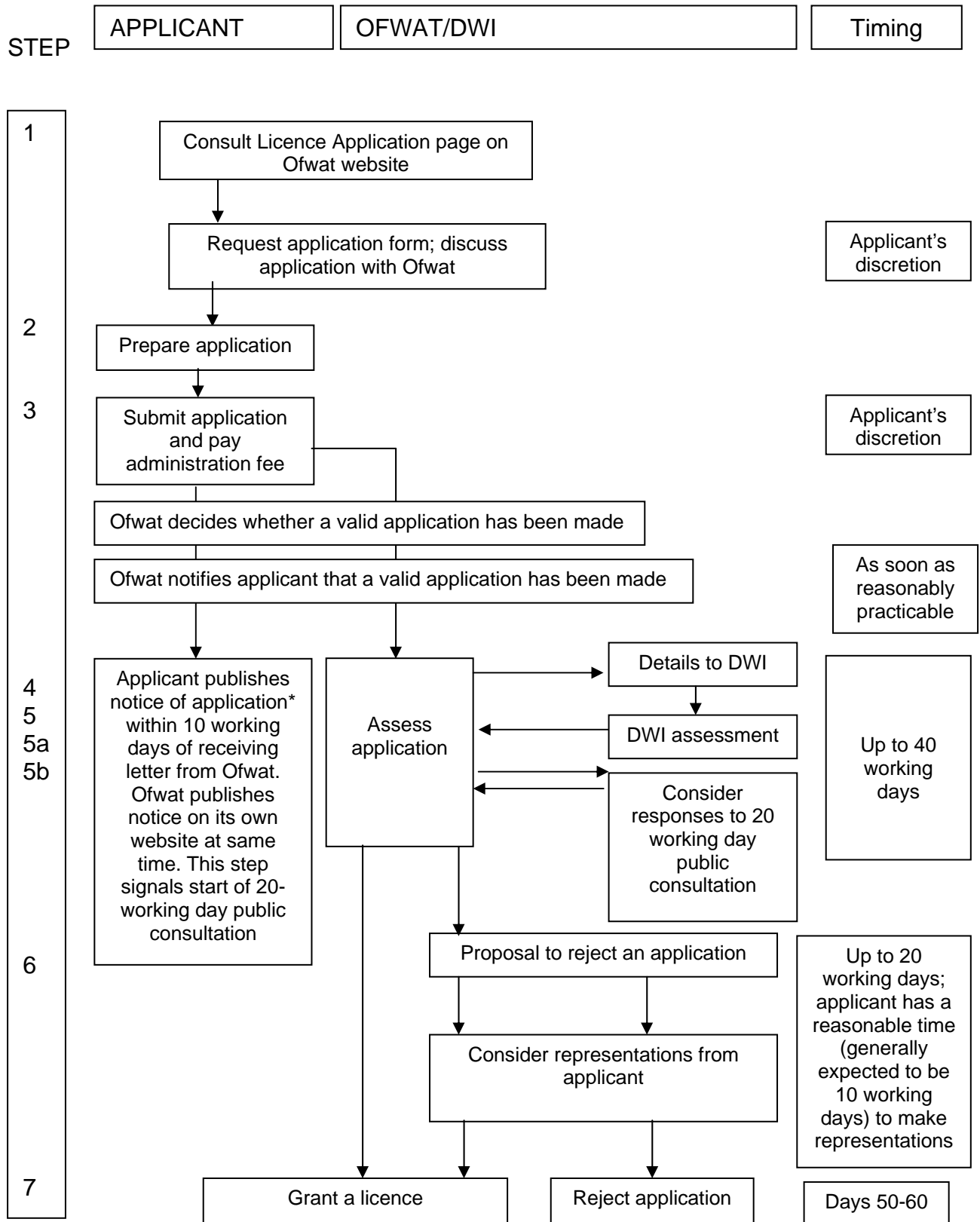
³⁷ See sections 67 (standards of wholesomeness), 68 (duties with respect to water quality) and 69 (regulations for preserving water quality) WIA91; Water Supply (Water Quality) Regulations 2000 SI 2000/3184 (as amended by the Water Supply (Water Quality) (Amendment) Regulations 2001 SI 2001/2885) and the Water Supply (Water Quality) Regulations 2001 SI 2001/3911 (W. 323).

FLOW CHART: APPLICATION FOR A RETAIL LICENCE



* This should contain the particulars specified in Part 1 of Schedule 2 to the Application Regulations.

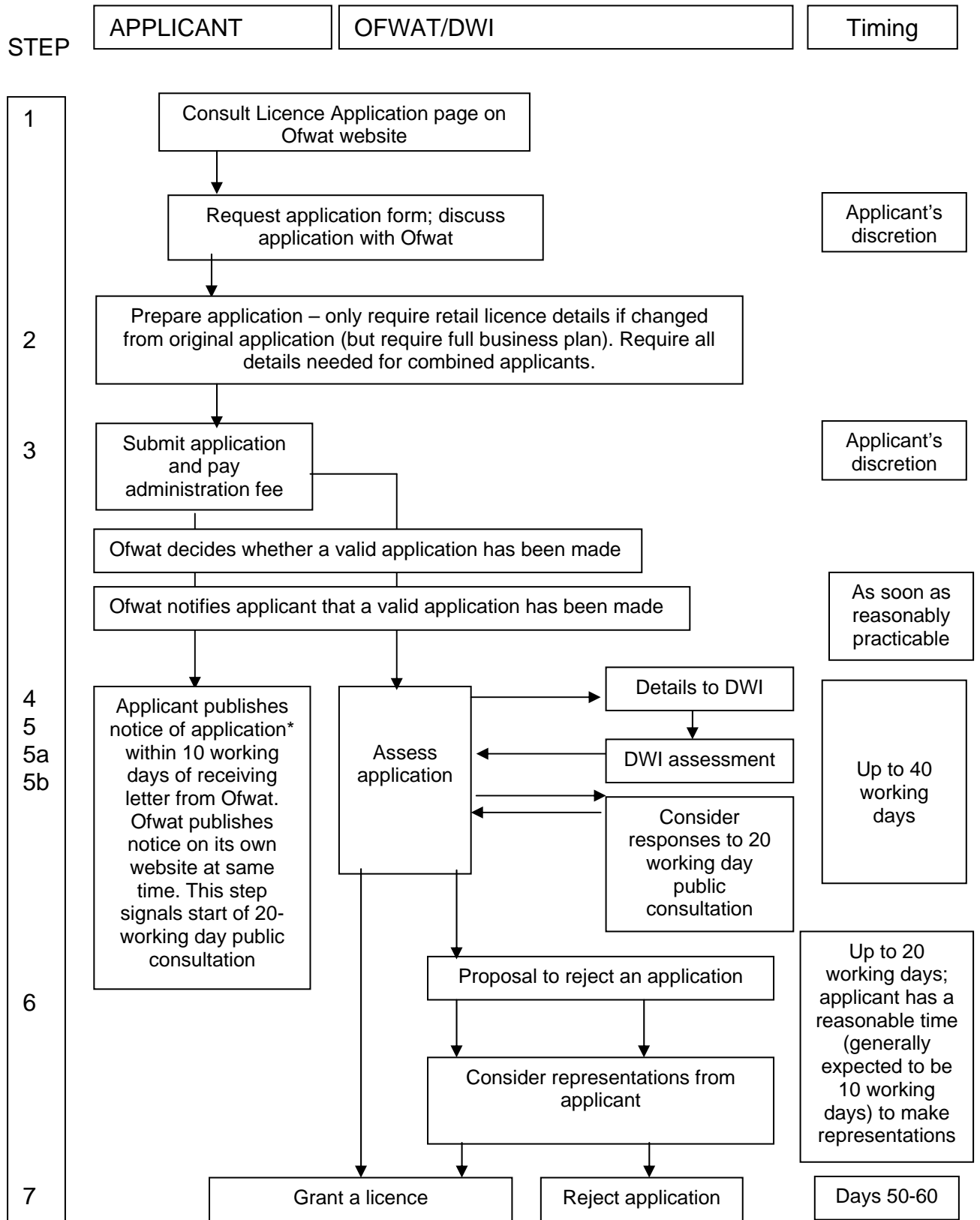
FLOW CHART: APPLICATION FOR A COMBINED LICENCE



* This should contain the particulars specified in Part 1 of Schedule 2 to the Application Regulations.

8. For combined licensees, once they have received their licence, and before they are permitted to introduce potable water into the public supply system, they will need to satisfy DWI that they meet the regulatory requirements relating to water sources and treatment works.

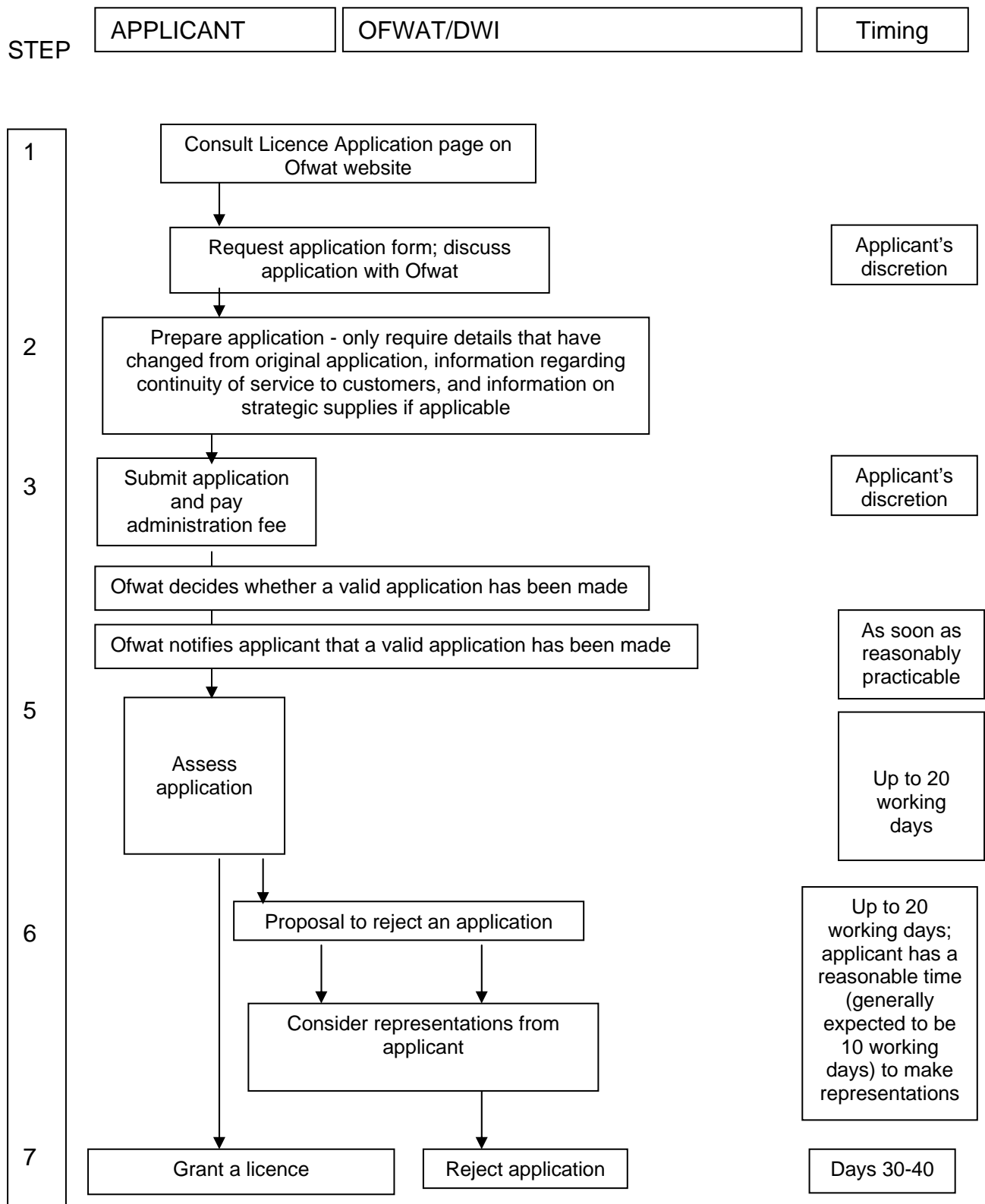
FLOW CHART: APPLICATION FOR A VARIATION OF A RETAIL LICENCE TO A COMBINED LICENCE



* This should contain the particulars specified in Part 2 of Schedule 2 to the Application Regulations.

8. For combined licensees, once they have received their licence, and before they are permitted to introduce potable water into the public supply system, they will need to satisfy DWI that they meet the regulatory requirements relating to water sources and treatment works.

FLOW CHART: APPLICATION FOR A VARIATION OF A COMBINED LICENCE TO A RETAIL LICENCE



Appendix 2: Notice of application for a Water Supply Licence

Regulation 5(4) of the Water Supply Licence (Application) Regulations 2005 requires that a notice of the application for a water supply licence, required to be published by an applicant pursuant to section 17F(2) WIA91, shall contain the particulars specified below.

Notice of application for a water supply licence under section 17A of the Water Industry Act 1991

[Insert name of applicant] whose registered office is at *[insert full postal address]* gives notice that it has made an application to the Office of Water Services³⁸ ('Ofwat') for a *[insert either 'retail' or 'combined' as appropriate]* licence under section 17A of the Water Industry Act 1991.

Any person who wishes to make representations or objections with respect to the application should do so in writing (which includes by e-mail) to Ofwat at *[insert full postal and appropriate e-mail address of principal office of the Authority]*. These must be received at Ofwat no later than 17.00 hours on *[insert appropriate date, if known, otherwise state the twentieth working day after the day of publication of this notice on Ofwat's website; see regulation 6]*. Further information about how to make representations or objections, including information on the treatment of confidential information, can be obtained from Ofwat at the above address or at *[insert reference to appropriate page on the Authority's website]*

[Insert full name of director or company secretary responsible for this notice and "Director" or "Company Secretary" as appropriate]
For and on behalf of *[insert name of applicant]*
Date *[insert date of publication]*

³⁸ Water Services Regulation Authority since 1 April 2006.

Appendix 3: Notice of application to vary a retail licence

Regulation 5(4) of the Water Supply Licence (Application) Regulations 2005 requires that a notice of the application for a variation of a retail licence so that it gives also the supplementary authorisation, required to be published by an applicant pursuant to section 17F(2) WIA91, shall contain the particulars specified below.

Notice of application for variation of a retail water supply licence under section 17A of the Water Industry Act 1991

[Insert name of applicant] whose registered office is at *[insert full postal address]* gives notice that it has made an application to the Office of Water Services³⁹ ('Ofwat') for a variation of its retail licence under section 17A of the Water Industry Act 1991 so that it gives also the supplementary authorisation.

Any person who wishes to make representations or objections with respect to the application should do so in writing (which includes by e-mail) to Ofwat at *[insert full postal and appropriate e-mail address of principal office of the Authority]*. These must be received at Ofwat no later than 17.00 hours on *[insert appropriate date, if known, otherwise state the twentieth working day after the day of publication of this notice on Ofwat's website; see regulation 6]*. Further information about how to make representations or objections, including information on the treatment of confidential information, can be obtained from Ofwat at the above address or at *[insert reference to appropriate page on the Authority's website]*

[Insert full name of director or company secretary responsible for this notice and "Director" or "Company Secretary" as appropriate]
For and on behalf of *[insert name of applicant]*
Date *[insert date of publication]*

³⁹ Water Services Regulation Authority since 1 April 2006.

Appendix 4: Certificate of Adequacy

Standard licence condition 3 of the water supply licence of *[insert company name]* granted pursuant to section 17A of the Water Industry Act 1991 requires that the company's directors certify to Ofwat that all of the arrangements required by standard licence condition 2(3) are in place and that *[insert company name]* has, and will have until 31 March in the following year, all the management, financial, technical, operational and other resources needed for securing that it is able to meet the obligations mentioned in standard licence condition 2(3).

Standard licence condition 2(3) provides that *[insert company name]* shall ensure that all such arrangements have been made as are necessary for securing that –

(a) it is and continues to be able to meet its obligations under –

- (i) its water supply licence; and
- (ii) any statutory requirement imposed on it in consequence of its licence, including its obligations under terms and conditions agreed or determined under section 66D of the Act (sections 66A to 66C: determinations and agreements); and

(b) it has sufficient product and public liability insurance for the activities authorised by its licence.

In compliance with standard licence condition 3, the Directors of *[insert company name]* have assessed company resources as stipulated by the licence and certify that all of the arrangements required by standard licence condition 2(3) are in place and that *[insert company name]* has, and will have until 31 March *[insert year]*, all the management, financial, technical, operational and other resources needed for securing that it is able to meet the obligations mentioned in standard licence condition 2(3).

[Insert full name of the director or company secretary responsible for this certificate and 'Director' or 'Company Secretary' as appropriate]

For and on behalf of *[insert company name]*

Date *[insert date of issue]*

Appendix 5: Business Plans – guidance to applicants and sponsors

This appendix details the information we will require in applicants' business plans and the verification we will require from sponsors and financial backers. We expect to revise these requirements from time to time as the regime develops.

In order to assess applicants' financial and managerial viability, we will require each applicant to submit a business plan, accompanied by statements from its financial backers and from a sponsor who can assist the applicant in demonstrating its financial and managerial capability.

Our approach aims to give confidence to water undertakers and eligible customers that any company granted a licence is likely to have the financial and managerial capacity to be a licensee. It cannot guard against any risk of future financial failure or guarantee to customers and undertakers that licensees will always be financially viable.

Guidance to applicants

Content of business plan

The applicant's business plan should as a minimum cover the three years following its application and contain the information listed below. These requirements should be seen as a minimum; in the majority of cases we would expect applicants to provide additional supporting information. The onus is on the applicant to ensure that its plan includes all information necessary for its sponsor to make an informed assessment of its financial and managerial viability.

The business plan should expose any material assumptions underlying the applicant's projections.

Further guidance on producing a business plan can be found on the Government's Business Link website at www.businesslink.gov.uk.

The business plan should be structured as follows:

Introduction to the company

This section should contain brief details of the company's history, past and present activities, and the activities it plans to undertake if granted a water supply licence.

Strategy and expenditure

This should as a minimum contain:

- The applicant's strategy, covering at least the first three years of its operation, including details of the type of customers it plans to target, and projections for number and size of customers;
- The expected cost of implementing this strategy, including:

- If applying for a combined licence, the costs of additional activities that the applicant would be carrying out compared with the activities of a retail licensee (such as water quality monitoring);
- The estimated cost, as quoted by an appropriate insurance company,⁴⁰ of acquiring product and public liability insurance at an appropriate level; and
- The estimated cost of necessary security and emergency arrangements.⁴¹

Management and personnel

The plan should include:

- Curricula Vitae for directors, Managing Director/Chief Executive Officer and other key personnel or sub-contractors who will be involved in the licensed activity. These should include details of any professional qualifications and relevant experience;
- Details of any advisors, including accountants, lawyers and technical advisors, and information on how the applicant plans to make use of their expertise;
- Details of workforce in terms of total numbers and by department;
- Plans for staff development including recruitment or training plans; and
- Confirmation by the directors that, in their opinion, the applicant has sufficient managerial capacity to perform the activities set out in its business plan.

Financing plan

This section should focus on the finance required by the business, consistent with the expenditure needs identified in the previous two sections.

The applicant's directors should confirm that, in their opinion, the applicant has access to sufficient capital facilities to fund the activities set out in its business plan.

This section should also:

- List the finance facilities that the applicant intends to use to fund the activities set out in its business plan;
- Outline longer term plans for the financial structure of the business; and
- Expose any material financing assumptions, including cost of debt/equity, critical financial indicators/covenants, implied capital structure and dividend policy.

Financial projections

This section should include, as a minimum, the following statements:

- Opening balance sheet;
- Projected closing balance sheets for the following three years (to include a quarterly breakdown);

⁴⁰ The definition of an 'appropriate' company will depend on the size of the company and the level of insurance applied for. The onus is on the applicant to prove that their insurance is provided by an appropriate company that is authorised by the Financial Services Authority.

⁴¹ The necessary security and emergency arrangements with which licensees will need to comply are set out in undertakers' access codes. Applicants should refer to the latest available version of the access code for the company or companies in whose area they aim to operate. They should also be aware that they need to comply with the Security and Emergency Measures (Licensed Water Suppliers) Direction 2006.

- Three years' projected cashflow statements (to include a quarterly breakdown); and
- Three years' projected profit and loss statements (to include a quarterly breakdown). A note to these statements should split the projected turnover figure into a) turnover from licensed activities and b) turnover from other activities;

The applicant should provide commentary as appropriate on the items in these statements.

Accompanying statements

The business plan should be accompanied by the following:

- **A declaration from the applicant's financial backers** that they are willing to provide funds based on the business plan. This should be submitted on headed paper. 'Financial backers' are those bodies that the business plan indicates are expected to provide all or most of the finance for the applicant's activities over the following three year period. They may include lenders, the applicant's parent company or the applicant itself if it does not envisage raising new capital to fund its activities. If finance is intended to come from more than one source, the applicant should provide a declaration from each major backer. These declarations will not constitute a guarantee that funds will be available, but are intended to give us additional assurance that new licensees will be able to finance their functions.
- **A statement from a sponsor**, which should not be an appointed undertaker if the applicant is an associate of that undertaker, on the applicant's financial and managerial capability to carry out the activities specified in its business plan. This should be submitted on headed paper. The confirmation we will require is detailed below. The sponsor should be of good standing, and should be authorised by the Financial Services Authority (FSA) under the Financial Services and Markets Act 2000, or be a credit institution able to carry on a business in the UK under the provisions of the Second Banking Directive (89/646/EEC). The applicant may propose to appoint as its sponsor an organisation that already has knowledge of its application, including its financial backer, providing that it is appropriately authorised and is able to give us the confirmation we require.

We need to be satisfied that the sponsor is competent to discharge its responsibilities. We retain, therefore, the right to reject any potential sponsor. The applicant should inform us at the earliest opportunity who it intends to appoint as its sponsor.

Guidance to sponsors

Purpose of sponsor statement

The sponsor should produce a written statement confirming that:

- The applicant's directors have confirmed in writing that in their opinion its financial and managerial resources are sufficient to fund and undertake the activities set out in its business plan;

- It is satisfied that confirmation on the adequacy of financial resources has been given after due and careful enquiry by the applicant;
- It is satisfied that the applicant has taken all necessary steps to ensure that the assumptions underlying its business plan are reasonable;
- The persons or institutions providing finance have stated in writing that they are willing to provide funds based on the business plan; and
- It is satisfied that confirmation on the adequacy of managerial resources has been given after due and careful enquiry by the applicant.

A draft confirmation statement is shown below.

The sponsor should perform whatever checks it judges necessary in order to give the confirmation required. This may include obtaining confirmation that the directors have established procedures for them to make proper judgements as to the financial position and prospects of the company, and the adequacy of its managerial resources. It may if necessary include examination of the applicant's financial projections and underlying assumptions, and of the details it has provided on its managerial resources.

Draft statement

The sponsor should produce a written statement as follows:

As the appointed sponsor of [*name of potential licensee*], I hereby confirm that I have obtained written assurances from [*name of potential licensee*]'s board of directors that it has access to sufficient capital facilities to fund its activities, as set out in its business plan, for the next three years.

I am satisfied that this confirmation has been given after due and careful enquiry by [*name of potential licensee*], and that the company has taken all necessary steps to ensure that the assumptions underlying its business plan are reasonable. I am also satisfied that the persons or institutions providing the finance have stated in writing that they are willing to provide funds based on the business plan.

I also confirm that I have obtained written assurances from [*name of potential licensee*]'s board of directors that in their opinion it has access to sufficient managerial resources to carry out its activities, as set out in its business plan, for the next three years. I am satisfied that this confirmation has been given after due and careful enquiry by [*name of potential licensee*].

I confirm that I am [authorised by the Financial Services Authority under the Financial Services and Markets Act 2000/a representative of a credit institution able to carry on a business in the UK under the provisions of the Second Banking Directive – *delete as appropriate*]



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July 2007
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