

WATER INDUSTRY ACT 1991, SECTION 13
PROPOSALS BY THE DIRECTOR GENERAL OF WATER SERVICES FOR THE
MODIFICATION OF THE CONDITIONS OF APPOINTMENT OF
MID KENT WATER LIMITED AS A WATER UNDERTAKER

THE PROCESS

Ofwat is required to consult on proposed modifications to the conditions of appointment of Mid Kent Water Limited (Mid Kent Water). This notice seeks responses to those modifications described below. Any representations or objections must be sent in writing to Keith Mason, Director of Regulatory Finance at Ofwat, Centre City Tower, 7 Hill Street, Birmingham, B5 4UA (fax, 0121 625-3609 or e-mail keith.mason@ofwat.gsi.gov.uk) to be received no later than 5:00pm on Thursday 28 July 2005.

DESCRIPTION OF THE MODIFICATIONS AND THE REASONS FOR THEM

On 1 March 2005, Hastings Diversified Utilities Fund (HDUF) and the Utilities Trust of Australia (UTA) announced that they had each acquired a 50% interest in Swan Group plc (Swan), the ultimate holding company of Mid Kent Water, through their acquisition vehicle MKW HoldCo 1 Ltd (MKW). UTA and HDUF each invested approximately A\$98 million (£40m) for their 50 per cent interests in Swan. Mid Kent Water is a licensed water undertaker supplying approximately 245,000 homes and business customers in and around Kent and part of East Sussex, in a catchment area that covers some 2050km².

We issued a consultation paper on 21 April 2005. We invited views on UTA's and HDUF's capacity to be the owner of a regulated water business, the current arrangements for the ring fencing of the licensed water business and the need for modifications to Mid Kent Water's licence.

On the basis of responses to our consultation paper we consider that minor licence modifications are required to ensure Mid Kent Water has the active co-operation of its owners.

Ring-fencing of Mid Kent Water

Ofwat wishes to ensure that Mid Kent Water's regulated business is ring-fenced from the other activities of its new owners. Mid Kent Water already has the most up-to-date ring-fencing provisions which were introduced following Swan's acquisition of Mid Kent in 2001.

The role of Mid Kent Water's owners

All water companies need to have the active co-operation of

their owners in carrying out their functions as water and sewerage undertakers and complying with the conditions of their Appointments. Mid Kent Water's licence currently requires it to procure from its current owners, or if they shall at any time cease to be the owners, from its new owners, legally enforceable undertakings that they will:

- (a) give the company all information it requires to comply with its licence;
- (b) refrain from any action which would be likely to cause or require the company to breach any of its obligations under the Water Industry Act 1991 or its licence as a water undertaker;
- (c) ensure that the company's Board contains not less than three independent non-executive directors.

The text of this licence condition will be modified to reflect the new ownership structure. It will not affect the content of the required undertakings as just described.