



WATER ACT 2003
WATER SUPPLY LICENSING

Applying for a Water Supply Licence

Consultation responses and RIA

July 2005

Licence application guidance – eligibility, licensing, customer transfer protocol and strategic supplies consultation

Summary of responses and final regulatory impact assessment

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Appendix 1: Eligibility, licensing, customer transfer protocol and strategic supplies consultation – list of respondents

1. Introduction

In October 2004 we consulted on our draft guidance on applying for a water supply licence¹.

From 1 December 2005, non-household customers who are likely to use at least 50 megalitres (Ml) of water a year at eligible premises will have the option of switching from their existing water undertaker to an alternative water supply licensee². Licensees will be able to compete by purchasing a wholesale supply of water from an existing water undertaker and selling it to a customer (a retail supply), or by introducing water into a water undertaker's supply system and selling it to a customer (a combined supply). Water undertakers must provide access to licensees on terms that comply with the licensing provisions of the Water Industry Act 1991 (WIA91) and our guidance on access codes.

The licence application 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.

This paper summarises the responses we received on the licence application sections of the consultation and explains how we are taking account of them in the final guidance on licence applications. It covers questions 9 – 18 of the consultation, which were the questions relating to licence applications. If you wish to discuss any aspect of this paper, please contact Clair Daniel on 0121 625 1318 or e-mail enquiries@ofwat.gsi.gov.uk.

¹ 'Water Act 2003: Water Supply Licensing. Eligibility, licensing, customer transfer protocol and strategic supplies', October 2004.

² Referred to in this paper as a licence.

2. Responses to the consultation

2.1 Summary

We received responses from 34 stakeholders including 17 statutory water undertakers operating in England and Wales, Drinking Water Inspectorate (DWI), Water UK, WaterVoice and four potential new licensees. Bristol Water, Folkestone & Dover Water Services, Portsmouth Water, Scottish Water, Sutton & East Surrey Water and Tendring Hundred Water Services confirmed their support of the response submitted by Water UK, rather than providing individual responses to the consultation. A list of respondents is in appendix 1, and copies of all replies are available to read in our library.

We have summarised the responses to each question and set out how we will address the points in the paragraphs headed 'Our conclusions'. We have carefully considered all points raised by respondents to the consultation. While we note that a large proportion of responses are from water undertakers we have taken account of the risk of bias in the redrafted document.

2.2 Key points raised in the responses to the consultation

This section summarises the key points that were made in reply to the consultation and explains our response to these issues.

a) Fees

Many respondents commented that it is important to ensure that the application fee should cover the cost of administering the applications, and that the fees charged for each type of licence are appropriately cost reflective for that licence. We have revised the fees following further work and are satisfied that they reflect the average cost we expect to incur in processing each type of application. We do not consider (as suggested by some respondents) that individual fees, depending on the complexity of the application, are appropriate. This could lead to disputes with the applicant about the level of fee and would potentially lengthen the process whilst we sought agreement. It would also require the fee to be calculated and recovered after the application process had been completed which is more complex and time consuming.

b) Managerial and technical competence

A number of respondents were concerned that we ensure that applicants are both managerially and technically competent, as well as financially stable. We have not set prescriptive criteria to assess the financial stability and managerial competence of applicants. Instead, we will make appropriate judgements as to whether a licence should be issued based on the merits of each application. In order to address concerns raised by respondents we have set out in more detail

the assessment we will conduct. The list is not exhaustive. The exact details we will require and the assessment we will conduct will vary from case to case.

c) Financial stability

Many respondents believed that the proposed approach set out in the consultation paper did not constitute a sufficiently stringent assessment of applicants' financial and managerial viability and would not give confidence to water undertakers, customers and other licensees that the applicant was fully competent to hold a licence. To address these concerns we will require a sponsor statement where an appropriately qualified individual will provide a statement supporting the business plan, financing facilities and managerial capability of the applicant.

d) General comments on guidance on the licence application process

Respondents made a variety of general comments in their responses, raising issues that they felt strongly about or did not think that the guidance had covered. Where relevant, we have addressed these points in our guidance or in this summary of responses.

2.3 Concurrent consultations

In 2004 we also consulted on the following issues relating to licensing.

- Water undertakers' new conditions of appointment and Water Supply Licence conditions for potential licensees.
- Policy proposals on exceptions regulations and exemptions.
- Access code guidance.

We are reviewing the responses to all the consultations for links and related issues. We will also review all of the final guidance documents to ensure that our approach is consistent. In addition, the Technical Advisory Group will review and comment on drafts of the final guidance. Once the guidance is published, we will monitor how the market develops and consider whether and when we need to revise our guidance. In this way, we will ensure that all of the issues are covered in a consistent and transparent manner.

2.4 Responses to individual questions

2.4.1 Pre-application stage

Question 9: What other information do you think should be included in the information pack that will be sent to prospective Water Supply Licence applicants?

Most respondents agreed that clear assessment criteria for applicants should be provided to ensure that the process to qualify for a licence is transparent. The information pack should also provide details about the testing procedures to be applied prior to a licence being granted and that licensees will need further information in order to understand the conditions that they will need to comply with. This should include an understanding for both retail and combined licensees of the need to be able to maintain information on special response customers, and an ability to communicate with their customers and the water undertaker in an emergency. In addition, most respondents agreed that we should demonstrate rigour when assessing any application for a licence to provide water to customers. Many respondents also agreed that the information set out in the pack should be available on our website.

We received the following additional comments.

- A potential licensee suggested that we should provide information on what constitutes anti-competitive behaviour, steps that would be taken in the event of a complaint about such behaviour and sanctions that would apply where anti-competitive behaviour is established.
- Another potential licensee requested that the details of any ongoing fees payable by licensees to us be articulated. The structure of the fees and ongoing development also need to be developed.
- A water undertaker suggested that the information pack should, in addition to our proposals, include greater detail about DWI requirements in terms of protecting water quality. This is more extensive than simply meeting standards as inferred by the guidance. Our proposals should also include information on DWI's role in terms of audit and enforcement, together with requirements for monitoring and reporting and the requirement on applicants to demonstrate technical competence (eg a track record).

Our conclusions

We have taken on board comments from all respondents and have amended the information pack accordingly. We agree that the information in the application pack for a Water Supply Licence should set out all the information that a potential licence needs to make a full application and to allow us to rigorously assess the competence of an applicant. In addition to the information available in the pack, we are preparing a water supply licensing area on our website where all of the relevant guidance and information will be available. This will include a full explanation of our role and that of the potential licensee in the application process. The licence application guidance will set out a clear application process and the relevant criteria for each stage in the process; this will include further information on DWI's role in assessing technical competence. However, it is not possible for us to issue blanket guidance on what conduct is, or would be,

acceptable or unacceptable under the Competition Act 1998. Nor do we consider it appropriate or desirable for us to attempt to do so. Fees are addressed in questions 10 and 11 below.

2.4.2 Application submission – general

Question 10: Do you agree that the above fees are reasonable and are likely to broadly cover costs of administering licence applications? If not, what do you think the fees should be?

Most respondents commented that the fees set out in the draft guidance did not appear to be sufficiently cost reflective. Specifically, the difference between the retail and combined licence and the variation were seen as inappropriate when the differences in work are taken into account. In addition, respondents were concerned as to how DWI costs associated with a combined licence would be recovered.

We received the following additional comments.

- A water undertaker suggested that the costs of administering applications should be ring-fenced, to enable us to review the level of fees in the light of experience.
- Another water undertaker stated that in order to ensure successful water competition it is imperative that licensees are thoroughly and rigorously evaluated. Therefore, it is important that the fees reflect the amount of work and the level of evaluation being undertaken at this stage, as well as the gravity of what is being undertaken. This is of particular relevance when an applicant applies to switch from a retail to a combined licence. Other issues the water undertaker stated need to be considered by Ofwat include funding ongoing and future costs in relation to licensing, for example, annual processes, revisions and changes. The water undertaker suggested these should be contained within the licence fee. The water undertaker also noted that DWI costs could be significant, particularly in relation to combined licence applications, DWI audit of combined licence holders outside of the application process, the auditing of new sources, treatment works and, we suggest, treatment processes. The water undertaker stated that the £100 incremental cost of switching from a retail to a combined licence is inappropriate and inadequate for what is proposed to be up to 20 days' work.
- A water undertaker also stated that it appeared that the fees charged by Ofwat will be paid into the Consolidated Fund. It suggested that these fees should be received by Ofwat in order to fund this new, additional workload. The water undertaker stated that was not appropriate to expect existing water undertakers and their customers who finance Ofwat to pay for administering a licensing system.

Our conclusions

We agree that the fees set out in the consultation paper were not set at the appropriate level. We have reassessed the amounts to ensure that the fees for each licence and for variations of a licence are more commensurate with the level of work involved. The new fees are:

- Combined licence - £2500;
- Retail licence – £2000;
- Variation from retail to combined - £1350;
- Variation from combined to retail - £550.

However, it should be noted that DWI's costs are not included, as the licence application fee will not recover these. Whilst it is possible to ring-fence the monies received as licence fees it is not practicable. We will carefully monitor the level of fee and the associated costs and will consider asking the Department for Environment, Food and Rural Affairs (Defra) to review the fee if it is too high or too low. The fees are prescribed in the Regulation. Amendment of the Regulations is a matter for the Secretary of State, subject to Parliament's consent. Defra will consider representations made to it by Ofwat on the level of fees in the light of experience.

Question 11: Do you agree that we should apply a single fee per application irrespective of how complex the application is?

Most respondents stated that there should be differing fees depending on the complexity of the application to reflect the true costs of each application. However, other respondents saw the benefit of a single fee and agreed that this was an appropriate charging method. In addition, a number of respondents stated that we should review the charges after a period of time.

We received the following additional comments.

- A water undertaker said that there are many benefits of standard charges including simplicity, certainty and cost effectiveness to administer. The standard charge should be sufficient to recover the costs, on average, of all applications including complex ones.
- Another water undertaker stated a single charge was appropriate provided that applications followed a standard format. Where a non-standard application is to be progressed, it may be necessary for us to provide a structure which allows for additional charges to be made.
- A water undertaker said that a single application fee would damage incentives to apply for a simple licence, given that a proportion of that fee would go towards financing the more complex applications. The water undertaker feels

that the charge should reflect the level of complexity involved and be more indicative of the true costs of administering the licence application procedure.

Our conclusions

We have considered respondents' comments. We believe it would be inappropriate to charge a different fee to different applicants, as this could result in additional disputes regarding the fee to be charged. A single fee for each type of licence that recovers on average the cost of making an application is more appropriate to ensure costs are recovered and unnecessary delays to the application process are avoided. We plan to reconsider the fees after 12 months in the light of the applications that we have received and processed. If we determine that the fee should be revised in the light of experience then we will make representations to Defra to ask them to review the fee. The fees are prescribed in the Regulation. Amendment of the Regulations is a matter for the Secretary of State, subject to Parliament's consent. Defra will consider representations made to it by Ofwat on the level of fees in the light of experience.

2.4.3 Suspending or refusing a licence application

Question 12: Do you agree with these reasons for suspending or refusing a licence? If not, what reasons do you suggest and why?

Most respondents agreed with the reasons for suspending or refusing a licence.

We received the following additional comments.

- A water undertaker said that we should list the competencies (and associated target levels) that we will be checking when determining if an applicant is suitable to be granted a licence.
- Another water undertaker said that it was concerned about the 20-day period for objections as it thought that this is inadequate and proposed 40 days instead.
- A water undertaker suggested that the process for raising objections and concerns needs to be outlined, as does the process for a licensee's right of appeal.
- One water undertaker would like to see the following added as a reason for suspending or refusing a licence:

“There is concern about the ability of the applicant to fulfil regulatory or water undertaker's requirements.”

- Another water undertaker expected that the guidance would include more detail on the criteria we intend to use to decide whether an applicant is 'suitable' or not.

Our conclusions

We have provided a non-exhaustive list of reasons in the guidance for suspending or refusing a licence in the guidance, although it should be noted that we would refuse a licence if for any reason the applicant had not demonstrated its suitability to be granted one. We have also clarified the procedure for raising objections to proposed licence applications. One water undertaker stated that the period for objections should be increased from 20 to 40 days. Defra has stated in its responses paper that "the Government believes that twenty working days is sufficient for interested parties to make representations or objections to Ofwat in respect of an application for a licence. Interested parties can subscribe to Ofwat's website so as to be informed immediately of new notices of applications published in it. The period is also consistent with the period for representations or objections in respect of applications for gas and electricity licences." We agree with this position.

Question 13: Do you think there are other reasons to refuse a licence?

Many respondents suggested additional reasons why we should refuse a licence including:

- cases where a director is an undischarged bankrupt;
- where an existing water undertaker is unable to demonstrate that the associated company is separate from the water undertaker;
- where key personnel, as well as, or instead of, directors, were shown to be unsuitable;
- if at least one director does not hold a relevant professional qualification;
- if an applicant does not meet the rigorous testing of technical competence;
- if the process timescales are not being met;
- if the applicant is not competent in delivering all the necessary processes required and illustrating that they will be performed correctly;
- where further information is received from applicants and if this is material then there may be a need to go for further consultation;
- if the applicant is not financially viable and/or there risk of default;
- where a licensee has previously had a licence revoked; and
- failure to maintain an adequate credit rating.

We received the following additional comments.

- One water undertaker stated that the Certificate of Adequacy is less demanding than the requirements of water undertakers under Condition F of

their appointments. It should be a requirement that licensees' submissions should be audited.

- Another water undertaker stated that it should be clear that the examples given in the guidance are just that and that the list is non-exhaustive.

Our conclusions

We have taken many of the comments on board and have set out a non-exhaustive list of circumstances in which we will refuse a licence. In addition to the reasons set out in the guidance we may refuse a licence if we believe that the applicant has failed to demonstrate its suitability. We will require that a statement from its sponsor supports an applicant's submissions.

2.4.4 Assessment criteria

Question 14: What other things should we consider when assessing the financial stability and managerial competence of a licence applicant?

Financial stability and managerial competence were key concerns of many respondents. A number of respondents stated that sufficient assessment criteria have been identified, but others stated that none of the listed criteria addressed the financial stability of the applicant. Respondents felt that we should set out the tests that we intend to apply to the financial information requested in order to determine financial stability, and our proposals with regard to acceptable credit ratings, parent company guarantees or other financial security.

Respondents also stated that applicants should provide evidence of any criminal record (personal or corporate) of the directors, the applicant company and any parent/holding company. Some respondents were of the opinion that a bond should be provided by any applicant wishing to supply water to customers. Proof of competency is important and some respondents sought clarity on how 'adequate knowledge' will be assessed. Respondents also suggested that Health and Safety competence should be included. Greater clarity on water undertakers' ability to disconnect a licensee's customer is also required. In addition, some respondents stated that the licensees' resources to pay water undertakers for services received should be assessed, to ensure that a licensee has the capacity to pay for the water it expects to use.

We received the following additional comments.

- A water undertaker suggested that at least one of the directors should hold a recognised professional qualification, such as CIWEM Member or Chartered Engineer, and that all key personnel must provide certificated evidence of qualifications and achievements.

- Another water undertaker requested that the Certificate of Adequacy should be expanded to include “and that there is no reasonable expectation of any material change that will impair the company from carrying out its licence obligations”.
- A water undertaker requested that we identify in more detail what is considered ‘adequate consideration’ of the standard licence conditions.
- A potential licensee suggested that we should add an assessment process to the terms of supply security, to ensure that the applicant does not have links with any terrorist groups. This should include a review of the licensee’s systems (or proposed systems), for upholding the security of the public water supply.
- One water undertaker remained concerned by the minimal levels of ongoing monitoring by us. It considered that licensees should be audited annually by the DWI and us. At the very minimum, it considered that the Certificate of Adequacy should be audited. The respondent stated that it should not be left to water undertakers to have to monitor licensees’ operations.

Our conclusions

We note the points made about the assessment of the financial stability and managerial competence of applicants for a Water Supply Licence. We have expanded the sections dealing with how we will assess the stability and competence of an applicant as licensee. We have also set out in more detail the information that will be required from an applicant. We will require the applicant’s business plan to be accompanied by statements from its financial backers and from an appropriately qualified sponsor who can assist the applicant in demonstrating its financial and managerial competence.

We have not set out a prescriptive standard for the information that we will require, as this will vary on a case by case basis. However, we do not plan to insist upon particular qualifications or experience, as the appropriate standard will depend on the individual applicant. With this in mind, we are not providing additional detail of how adequate knowledge will be assessed as this will be considered on a case by case basis. We will not be asking applicants for a financial bond.

2.4.5 Technical competencies

Question 15: What other responsibilities should applicants for a combined licence or variation to a combined licence be aware of?

The guidance should clearly set out how capability and competence will be assessed. Respondents stated that the applicant should be aware of the requirements of:

- Security and Emergency Measures Direction;
- Environmental Protection Act 1990;
- Waste Management Licensing Regulations 1994;
- Pollution Prevention and Control Regulations 2000; and
- Water Resources Act 1991.

In addition, respondents stated that all retail and combined licensees need to be aware of flow monitoring and hydraulic issues as well as safety systems. The level of competence required to treat borehole as opposed to river water is different and therefore the level of competence displayed by a licensee will change as new sources are developed as part of its licence.

Other considerations that respondents stated should be taken into account are:

- the responsibility to make data available to water undertakers, customers and DWI;
- an awareness and knowledge of DWI Information Letters and guidance to the regulations; and
- an understanding of, and the ability to implement and co-ordinate emergency plans and actions.

Respondents agreed that we should take account of DWI assessment provided it is comprehensive and we are satisfied that the applicant is competent.

Respondents also stated that it would be useful to understand what assessment DWI will undertake. They said that the guidance should clarify how additional technical considerations will be assessed, including health and safety, environmental protection (eg protecting boreholes from oil leaks), and adherence to abstraction licences. Respondents also requested that the licensee's auditors should sign the Certificate of Adequacy in addition to its directors, in order to make it consistent with paragraph 6A of Condition F of water undertakers' instruments of appointment.

Our conclusions

Points raised about the Certificate of Adequacy will be considered in the responses document for the conditions consultation. We have also set out in more detail in the licence application guidance the assessment that will be conducted by DWI. We have taken note of the comments with regard to the additional requirements of a combined licence and will consider them when making our assessment of each licence application.

2.4.6 Financial stability and managerial competence

Question 16: Do you agree that all of the above information requirements are necessary and sufficient (managerial competence and financial stability)?

Respondents commented that the information requirements appear necessary, but that greater definition of the assessment of adequate product and public liability insurance would be helpful. In addition, respondents commented that there is nothing to demonstrate systems and procedures are in place to comply with licence conditions, nothing on the skills, qualifications and experience of managers, sub-contractors and on security or compliance with our guidance. They also suggested that the information requirements should include information on health and safety policies, assurances and past records to demonstrate compliance, quality assurance certification and/or third party verification of systems. Respondents stated that new licensees should demonstrate their understanding of, and ability to comply with, the customer transfer protocol (CTP).

We received the following additional comments.

- A water undertaker stated that this is an area of considerable concern as a failure of the licensing process to prescribe that licensees hold a commensurable degree of insurance protection, as water undertakers would normally hold for a commensurable degree of risk, would lead to increased insurance premiums for water undertakers.
- Another water undertaker stated that the audited accounts should be provided for a period of at least the last 18 months and preferably three years.
- WaterVoice agreed that all the information requirements set out in section 4.2.2 of the consultation paper are both necessary and sufficient to allow us to assess the financial stability and managerial competence of the applicant licensee. It is important that a balance is struck between encouraging competent new entrants into the market and overburdening them with regulatory requirements.

Our conclusions

As set out previously in this paper, we have expanded the section setting out the requirements to assess financial and managerial competence. We agree with WaterVoice that it is important to strike a balance between encouraging competent new entrants and overburdening them with regulatory requirements. We have set out a non-exhaustive list of requirements to test managerial competence and financial stability, and will vary this depending on each applicant. Insurance is addressed in the access code guidance. We will not

require new entrants to have insurance at the point of application, although they should include a quote in their business plan.

2.4.7 Technical competencies – combined licensees only

Question 17: Do you agree that all of the above information requirements are necessary and sufficient (technical competence)?

Many respondents do not believe that the information requirements are sufficient. They stated that it is difficult to understand how DWI will satisfy itself that an entrant has sufficient knowledge of the issues identified under technical competence. Most respondents agreed that a more detailed explanation should be provided and that the guidance should make clear what level of 'understanding' is required. It would be useful to understand what assessment DWI will undertake. Respondents stated that the list of relevant documents should be extended to include:

- DWI's guidance on risk assessment for Cryptosporidium;
- the Water Fittings Regulations; and
- the various industry/DWI documents setting out best practice.

In addition, respondents stated that we should ensure that applicants are able to demonstrate their knowledge of the latest document revisions.

We received the following additional comments.

- A water undertaker stated that it is not sufficient to state that the prospective licensee should be able to demonstrate the 'appropriate knowledge'. Instead, it is essential that the prospective licensee has 'demonstrable competency' in all of the criteria listed. Of that list, where reference is made to an 'understanding' of treatment processes, approved products and processes, and the impact on the hydraulics of the system and water quality issues, this should be replaced with 'demonstrable competency'.
- DWI stated that it is particularly pleased to note the inclusion of the requirement to meet operational standards, given that most of the wholesomeness standards in the Regulations apply at the consumer's tap. DWI regularly reviews its guidance and updates documents as necessary. It will be the responsibility of the applicant to ensure that they are aware of the most recent version, which will be available on DWI's website.

Our conclusions

We have expanded the section of the guidance dealing with technical competencies to take account of respondents comments. In addition, we have set out in more detail how DWI will satisfy itself of an applicant's technical

knowledge and expertise. DWI will test rigorously for technical competency in its second stage assessment (once a licence has been granted), so the licence application assessment will be a mainly paper-based exercise to assess adequate knowledge.

Question 18: Do any of the above information requirements relate to potential retail licensees?

Respondents would be concerned if a potential retail licensee could not demonstrate a satisfactory level of knowledge in any of these areas. They stated that applicants for a retail licence should demonstrate an understanding of the role of DWI, and security arrangements that may be relevant to their role. In addition, respondents felt that requirements with respect to quality, pressure, safety and emergency issues relate to both retail and combined licensees. Safety and emergency issues are also relevant to retail licensees. They also stated that they would expect any retail applicant to have an 'understanding' of the regime pertaining to serving customers.

Respondents said that if a licensee plans to introduce water efficiency measures or leakage work to a customer's supply pipe network, then it is entirely possible that a reduction in water quality could occur as a result of poorly fitted equipment. Water undertakers should not, therefore, be held responsible for poor quality water or water that was not fit for purpose once the supply leaves the water undertaker's system to the customer's supply pipe/licensee's transfer network. Respondents stated that in order to avoid issues with quality and/or fitness for purpose potential retail licensees should also need to demonstrate knowledge of:

- the role of DWI;
- the regulatory requirement to supply wholesome water, the definition of water unfit for human consumption; and
- the potential impact of mixing waters of different quality.

We received the following additional comments.

- A potential licensee suggested that retailers should not need to demonstrate an in-depth knowledge of these topics, but should have an awareness of how to find the information.
- A water undertaker suggested that with a variation from combined to retail only applicants should still be subject to publishing a notice of application, especially to reflect a change in circumstances and for consistency (all other applications must be published).

Our conclusions

We have expanded the section dealing with the requirements for retail applicants to address comments made by respondents. We will assess the retail applicant's awareness of their responsibilities under the Regulations and the Water Industry Act 1991. We will not require the publication of a notice when an applicant varies its licence from combined to retail.

3. Final regulatory impact assessment

3.1. Purpose of the regulatory impact assessment

Our consultation on the guidance on applying for a water supply licence formed part of the framework for implementing the water supply licensing provisions of the WIA91. Following this, section 17F (5) WIA91 requires the Secretary of State to issue regulations in relation to licence applications. These regulations³ require us to issue guidance on the form and manner of licence applications. Prospective suppliers will be able to apply for a Water Supply Licence in August 2005, with the overall regime due to commence on 1 December 2005.

This final regulatory impact assessment (RIA) examines the likely costs and benefits to water undertakers, licensees and other stakeholders, of following the approach that is set out below. It incorporates comments made in response to the consultation. The assessment of costs and benefits included in this RIA is mainly qualitative. Although there will be a degree of fixed costs associated with extending competition, we expect that the scale of these will be moderate because of the size of the initial market. Having said this, it is possible that the costs of implementing the new regime will be higher in the initial stages before the parties involved have established policies and procedures. Over the longer term we expect that the extent and magnitude of costs and benefits will depend more on the number of new entrants and the level of competitive activity in the market.

We will review this final RIA and its assessment of the costs and benefits to the industry when we next review the guidance on licence applications.

3.1.1 Responses to the partial RIA

We received 34 responses to the consultation and around a third of respondents commented on the draft RIA. In general, respondents agreed with our approach, including our preference for option 2. These comments have been taken into account in this final RIA.

Our assessment of the benefits and costs to the industry follows.

3.2 Summary of Options

In the partial RIA we identified and considered three options, summarised below:

- **Option 1:** Issue flexible/lighter approach guidance.

³ The Water Supply Licence Regulations (Application) Regulations 2005 SI 1638.

- **Option 2:** Issue balanced approach guidance.
- **Option 3:** Issue strict guidance.

Option 1

Under this option, we would issue flexible guidance with a lighter approach to each aspect of the licence application process. As set out in the responses document we feel that it is necessary to take account of respondents' comments and ensure that applicants are managerially and technically competent as well as financially viable. A light touch approach to the guidance does not meet this consideration.

Option 2

This is our preferred option. This option would allow us to take a similar approach to applications as Ofgem did when competition in the gas and electricity industries started. It would mean that the application process was not overly burdensome, but would ensure that licensees knew what would be expected of them and that they could prove that they were fully competent in all areas.

We preferred option 2 because we felt that options 1 and 3 did not strike the correct balance of ensuring that an applicant was competent whilst also ensuring that the process was not overly burdensome. Stakeholders supported this view.

Option 3

Under this option, we would issue strict guidance on each aspect of the licence application process. A strict process would have a high number of information requests, including water source and treatment works checks and a detailed DWI assessment that must be successfully completed before a combined licence was granted. This would make the process lengthy, onerous and burdensome to new entrants.

3.3 Summary of costs and benefits to support the adoption of Option 2

This section provides a summary of the costs and benefits associated with the adoption of option 2. It is intended to support our preferred approach of issuing licence application guidance that will ensure that licensees know what will be expected of them when applying for a Water Supply Licence, without being overly burdensome.

Benefits

This section summarises the expected benefits of supporting option 2.

Benefits to water undertakers/licensees

- It reduces the uncertainties for water undertakers and applicants, by setting out clear guidance to follow.
- It reassures water undertakers that licensees are fit and proper to access water undertakers' supply systems and should reduce the number of checks they will need to make on licensees during discussions on access agreements.
- It minimises the burden on potential licensees to show undertakers that they are fit and proper.
- It does not place disproportionate requirements on applicants for a water supply licence.
- Ensuring that licensees are aware of what is expected of them as a licence holder should result in a reduced number of representations from water undertakers during the licence application process, minimising our administrative costs and those of water undertakers.

Benefits to customers

By satisfying DWI and us of their competencies, licensees will indicate to eligible customers that transferring water supplier should not mean a reduction in water service quality and customers can enjoy the benefits on offer to them from increased competition.

Benefits to us

Ensuring entry of licensees that are fully competent is good for our reputation as a regulator and would offer some reassurance to other market participants about the application process. This should maximise the extent of competition and in turn signal success of the WSL regime.

Costs

This section summarises the expected costs of supporting option 2.

Costs to water undertakers

Undertakers may need to spend more time making checks on licensees during access negotiations than if we had issued strict guidance. DWI will make its own rigorous checks, however, and we do not expect the additional costs to undertakers to be high.

Costs to licensees

Licensees might face some costs when putting together applications following the licence application guidance. Whilst the guidance would attempt to answer

possible queries, there might still be cases in which clarification is needed which might incur some timing and administration costs.

Costs to us

We anticipate that option 2 would result in minimum time and administration costs for us, as water undertakers would be less likely to make representations about applications where the licence application process is rigorous enough to ensure that only competent companies are granted a licence.

Option 2 is our preferred option as it creates the least regulatory uncertainty, has the least impact on costs, allows a balanced approach that reflects the emergence of a competitive market and we anticipate that it should encourage successful competition.

Appendix 1: Eligibility, licensing, customer transfer protocol and strategic supplies consultation - list of respondents

Potential licensees

Waterlevel Limited (WL)
Aquavitae (AV)
Scottish Water (SW)
C2C

Water undertakers

United Utilities (UU)
Severn Trent Water (SVT)
Bournemouth and West Hampshire Water (BWH)
Anglian Water (ANH)
Yorkshire Water (YKY)
Wessex Water (WSX)
Dwr Cymru - Welsh Water (WSH)
Sutton and East Surrey Water (SES) - No comment (support Water UK response)
Portsmouth Water (PRT) - No comment (support Water UK response)
Thames Water (TMS)
Bristol Water (BRL) - No comment (support Water UK response)
Three Valleys Water (TVW)
Folkestone and Dover Water Services Ltd (FLK) - No comment (support Water UK response)
South East Water (MSE)
Dee Valley Water (DVW) - No comment
Northumbrian Water (NES)
Tending Hundred Water Services (THD) - No comment (support Water UK response)

Other Stakeholders

Drinking Water Inspectorate (DWI)
WaterVoice (WV)
Water UK (WUK)
Local Authority and Government Utilities Resource (LAGUR)
House Builders Federation (HBF)
Mr Malcolm J Sutcliffe (M. Sutcliffe)
EIC
The Energy Consortium (EC) - No comment
Electralink - No comment
Gemserv
The Chartered Institute of Purchasing and Supply (CIPS)
Major Energy Users' Council (MEUC)
University of West of England