

Amgylchedd a Datblygu Cynaliadwy
Environment and Sustainable Development



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref
Keith Mason
Senior Director of Finance and Networks
Ofwat
Centre City Tower
7 Hill Street
Birmingham
B5 4UA

23 January 2013

Dear Keith,

Welsh Government response to Ofwat consultation on Section 13 proposals to modify company licences

1. I write in relation to your organisation's consultation and information notice about Section 13 proposals to modify the conditions of appointment (licences) of all appointed water and sewerage and water only companies in England and Wales.
2. I am pleased to see that your revised consultation document has taken on board comments made in my letter of 23 November 2012. I also note that you have taken account of the views of the water industry and wider stakeholders.
3. You will be aware that overall your proposals to modify licenses do not reflect Welsh Government policy. However, Ofwat have reassured us on a number of occasions that decisions, particularly those focussed on wholesale and retail services, will be framed in the context of Welsh Government policy, both now and in the future.
4. During the consultation period, we have drawn to your attention references to water legislation within the proposed licence which do not correctly highlight the powers of the Welsh Ministers. It is clearly important that Ofwat, as the independent regulator for water and sewerage services for both England and Wales, accurately reflects the legal frameworks as they apply to appointees in Wales and England and I trust that the proposed licence will be updated to reflect these points.
5. In terms of your Periodic Reviews of the Appointed Business Activities highlighted in Section 1.2 and Section 8 of the license, I would like to reiterate that this takes account of Welsh Government policy.

6. The Welsh Government remains concerned with Section 18.1 of the proposed licence and we have discussed those concerns on a number of occasions during the consultation period. This is a novel clause and one which, in our view, does not sit easily within the context of a company licence. The section is by no means specific about whether a company may or may not have used 'all reasonable endeavours' in this particular context and would seem to be open to interpretation. Furthermore, it suggests that companies which do not adhere to your proposals regarding changing future price controls may be penalised, although the basis on which this might happen is not clear.
7. The Welsh Government is particularly concerned that the clause, as drafted, does not provide sufficient assurance that the development of changes to price controls will fully reflect Welsh Government policy and the legal framework in Wales. It is our view that it would be inappropriate for water and sewerage undertakers operating wholly or mainly in Wales to be expected to work within a regulatory framework which is not consistent with the broad policy direction set by the Welsh Government. We would therefore, request for clarity and assurance to be set out within the license.
8. This matter can, in our view, be addressed relatively easily and in a way that fully acknowledges and respects Ofwat's role as an independent regulator. We believe that it would be possible to amend Section 18.1 (or insert a new clause following 18.1) in such a way as to set out that appointees should only be expected to cooperate in the development of price controls where such a change is in line with relevant policies of the Welsh Government or the UK Government and the legal framework in Wales and in England. We have suggested a form of words to that effect which I append again for reference:

The Appointee will use all reasonable endeavours to work with the Water Services Regulation Authority, subject to the Appointee's legal duties and obligations and to the extent that any proposed change is consistent with relevant Welsh Government and UK Government policy and the legal framework in Wales and England as it applies to the Appointee, in a constructive and cooperative manner on the development of the Price Controls so that they might be appropriately targeted or operated more effectively in the interests of customers and in the wider public interest in respect of specific activities undertaken as part of the Appointed Business.

9. Alternatively, a more generic form of words could be included under Condition A or Condition B of the licence, which would provide more general application to the licence as a whole. Such a form of words could apply to all appointees or alternatively apply specifically to appointees wholly or mainly in Wales. I am open to options that could address this matter.
10. We note the suggestion of a side letter to the appointees in Wales. This is welcome and provides some further clarity regarding the purpose of section 18.1 but this is clearly separate to the licence itself and carries no legal weight. We therefore remain of the view that Ofwat should aim to include a reference within the main body of the licence which addresses the points raised in paragraphs 7-9 above. I would strongly encourage you to give this matter further consideration, in conjunction with the water companies wholly or mainly in Wales, prior to finalising the licence.
11. I am copying this letter to Nigel Annett, Managing Director of Dŵr Cymru Welsh Water and Norman Holladay, Managing Director of Dee Valley Water.

Yours sincerely,

Prys Davies

Deputy Director: Energy, Water and Flood
Welsh Government