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Water today, water tomorrow

# Negotiating bulk supplies – a framework

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## About this document

This document provides a framework for the appointed water companies in England and Wales as they consider negotiating suitable bulk supply agreements.

In general, we expect water companies to negotiate bulk supply agreements themselves without any intervention from us. However, if they cannot agree, they may ask us under sections 40 and 40A of the Water Industry Act 1991 (WIA91) to determine some or all of the contractual terms.

Bulk supply agreements will reflect the needs of the parties and the nature of the services provided. This document does not prescribe or limit the approach companies should take, but rather provides a checklist of 14 areas a bulk supply agreement could cover. Of course, companies must ensure that their bulk supply agreements comply with relevant legislation including competition law.

On 17 December 2012 we published [‘Negotiating bulk supplies – a consultation on our guidance’](#). We received 13 responses to the consultation, with most respondents supporting our general approach, and many making useful points of detail. Having considered the responses carefully, this document sets out a revised framework.

## Contents

1. Introduction	3
2. Our consultation	5
3. The framework	8
Appendix 1: List of respondents	17
Appendix 2: Summary of consultation responses	18

## 1. Introduction

### 1.1 Background on bulk supplies

A bulk supply is a supply of water from one appointed company to another. Bulk supplies are sometimes referred to as ‘water trades’ as they are a way for water companies to trade water. Transporting the bulk supply from one company to another company involves an ‘interconnection’, often in the form of a pipe. Companies can draw up a contract between them (a ‘bulk supply agreement’) that sets out the terms and conditions of a bulk supply, including the price.

Water trading can have economic and environmental benefits, by providing alternative sources of supply that may have lower costs or lower environmental impact.

However, it is not realising its potential. Since privatisation, companies have made significant investments in integrating their own water supply networks but the volume traded between them has remained fairly constant at about 4–5% of total supplies. In March 2010, we identified about £1 billion of potential savings in England and Wales from more water trading compared with the proposals in companies’ draft water resources management plans. Also, in June 2010, the Environment Agency published work by the Water Resources in the South East (WRSE) group that identified £500 million of potential savings from sharing resources in the south-east of England.

To help achieve these benefits, the UK Government has introduced a new Water Bill which includes measures to promote water trading. As well as providing this framework, we confirmed in [our final methodology for the 2014 price review](#) that we will offer water trading incentives for importers and exporters during the next price control period. In addition, in June 2012 the Environment Agency, Ofwat, Defra and the Welsh Government revised [the guideline that companies use to prepare their water resource management plans](#), to make sure companies properly consider bulk supply imports and exports when preparing their plans.

### 1.2 Interactions with the Water Bill

On June 27 2013 the UK Government’s Water Bill had its first reading in the House of Commons, following on from the Draft Water Bill published in July 2012.

Clause 8 of the Bill states that Ofwat may issue one or more codes setting out procedures for negotiating and renegotiating bulk supply agreements, and terms and conditions to be incorporated in such agreements, or principles governing those terms and conditions. When the Bill is enacted and these provisions are commenced we may issue codes that may partly or wholly supersede this document.

This clause also provides for Ofwat to publish rules about charges for bulk supplies, having regard to any guidance produced by the Secretary of State and Welsh Ministers. Sections 3.1 and 3.6 below relate to charges and the adjustment of charges. Any charging rules we issue following from the Water Bill could supersede these sections.

We have chosen to publish this document now to help companies negotiate bulk supply agreements in the meantime, and particularly during the current business planning round.

## **2. Our consultation**

In December 2012 we consulted on guidance on negotiating bulk supplies. We received 13 responses – nine of these were from the established water companies, one from a new appointee, one from the Drinking Water Inspectorate, one from an environmental organisation and one from a legal adviser. Appendix 1 lists the respondents, while appendix 2 includes our detailed analysis of the responses we received.

We summarise the key points from the responses below.

### **2.1 Form and status of the document**

During 2012 we developed a model contract with input from stakeholders. However, we decided that publishing a model contract would be too directive and inconsistent with companies taking more responsibility for their decisions.

We therefore developed and consulted on draft guidance. Respondents preferred this approach, agreeing with the reasons we gave of the need for flexibility and not wanting to stifle innovation.

The document is a framework that has been developed with input from the industry which companies can use if they want to.

### **2.2 Including guidance on pricing**

Some respondents wanted us to include guidance on pricing in this document. The purpose of this document is to provide a checklist of areas a bulk supply agreement could cover and not to provide guidance on commercial aspects of the bulk supply agreement itself. Prices are a fundamental commercial aspect of a bulk supply agreement which it would be better for companies to agree between themselves. We have therefore not included any guidance on pricing. The parties could, if they wanted to, use our bulk supply pricing principles to inform their negotiations on price (see section 2.3), but they are under no obligation to do so.

We recognise that the Water Bill might supersede this document. As mentioned in section 1.2 above, clause 8 of the Bill, as currently drafted, allows Ofwat to issue one or more codes which could include terms and conditions to be included in bulk supply agreements and to publish rules about charges for bulk supplies. We will only intervene in this way if it is appropriate to do so.

## **2.3 Combining the guidance with principles for making a determination**

If companies fail to reach agreement on a bulk supply, they may ask us to make a determination under section 40 or section 40A of the Water Industry Act 1991 (WIA91). In February 2011, we published '[Bulk supply pricing – a statement of our policy principles](#)', which sets out the principles we propose to use when making determinations of bulk supply agreements. Two companies sought greater certainty on how we will determine agreements, but that is not a matter for the framework.

Two respondents advocated combining the two documents, in the words of one to “create a single integrated guidance document and maintain it over time”. However, the two documents have different purposes. The purpose of this document is to provide a checklist of areas a bulk supply agreement could cover to help companies negotiate bulk supplies, whereas the bulk supply pricing principles relate to our policy when we are determining a bulk supply under the terms of the WIA91. Companies can look at our pricing principles and previous bulk supply determinations to inform their negotiations, but they are free to agree different terms from those we would have determined if asked. We have recently published an information notice – '[IN 13/08: Ensuring consistency in our approach to resolving pricing disputes](#)' – which covers bulk supplies, among other things, and companies can also refer to this.

## **2.4 Different types of bulk supplies**

Two respondents wanted separate guidance for supplies to new appointees and for “cross border supplies” between undertakers, and a third sought clarification of whether the guidance refers to all bulk supplies regardless of size and type.

We recognise there are different types and sizes of bulk supply. The framework provides a checklist of areas a bulk supply could cover and it is up to companies to decide which areas apply to their agreement. In places, the framework refers specifically to issues that might be more relevant to new appointees – for example, section 3.2 on facilitating the addition of new sites or connections.

## **2.5 Drinking water safety**

The Drinking Water Inspectorate made useful comments on managing risks to drinking water safety arising from bulk supplies in the development of our consultation document and in response to our consultation. Appendix 2 explains in detail how we have dealt with these points.

## 3. The framework

The framework consists of a checklist of 14 areas agreements could cover.

### 3.1 Price and non-price terms

The parties would expect a bulk supply agreement to include both price and non-price terms so that they know what services are being provided at what price. It might speed up negotiations if non-price terms were set first so that the parties know what services are being priced in the agreement. But we recognise that negotiations can be an iterative process where the non-price and price terms evolve during the negotiations.

The services provided might evolve during the duration of the agreement – for example, the volumes of water required could increase. This could be included in the initial agreement if the details are known in advance, or, alternatively, the agreement could provide a review mechanism.

The price terms could include:

- a standing charge and volumetric rate for each water supply;
- charges for any volumes of water the recipient takes that are above the maximum amount allowed in the agreement;
- a minimum charge that the recipient pays whether it takes any water or not;
- a capital contribution to the connection cost;
- charges for the provision of information;
- an infrastructure charge as defined in section 146 of the WIA91; and
- rules about the periodic adjustment of charges (see section 3.6).

The non-price terms could include many of the issues covered in the remaining sections – such as the ownership and responsibility for the assets used in the supply, the quality of the water and the duration of the agreement. Some other non-price terms that could be included in the agreement but which are not discussed further here are the commencement of the agreement, how charges are to be paid and how the parties are to operate the bulk supply.

## 3.2 Facilitating the addition of new sites or connections

New appointees sometimes apply for several variations<sup>1</sup> within one existing water company's area of appointment. If the new appointee does not have its own water supply, it will need a bulk supply from the existing water company.

If it is likely the new appointee will apply for more than one bulk supply, it might make sense for the first bulk supply agreement to allow for the addition of new sites or connections to that agreement. This could be done, for example, by keeping the main terms of the agreement the same and adding schedules to the agreement to include additional sites or connections.

We recognise that different bulk supply agreements might be needed for different sites or connections between the same parties if the circumstances of the sites or connections are significantly different. For example, a water company with a water supply surplus might negotiate two bulk supply agreements with a neighbouring water company that has a deficit. If the exporting water company was providing one supply from a dedicated borehole and the other from its integrated water supply network it might want to agree different terms to reflect the different risks to the bulk supply.

## 3.3 Ownership of and responsibility for the assets

The agreement should be clear about who owns and who is responsible for operating the assets that are used to provide the bulk supply. One way of doing this would be to include a detailed operational plan as a schedule, which, as well as defining ownership and operating responsibilities, could include details such as maximum flow rate and ramp up/down rates<sup>2</sup> as well as emergency contact details.

This information will help in resolving any operational problems and will have a bearing on the price terms of the contract.

There can be a distinction between the ownership and responsibility for the assets used to provide the bulk supply. For example, a supplying company might build an interconnection pipe from its integrated water supply system to that of another company to provide the bulk supply. The supplying company might own the pipe because it was the company that built it. But the receiving company might want to be

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<sup>1</sup> A 'variation' is a change to an appointee's appointed area.

<sup>2</sup> A ramp up rate is the speed at which the water flow increases. A ramp down rate is the speed at which the water flow decreases.

responsible for operating flows in the pipe because it might be an important supply for the receiving company. In this case, the ownership and the responsibility for operating the interconnection pipe belong to different companies.

There could also be examples where the ownership of the assets used to provide the bulk supply is split between the supplying and receiving company or a third party. An example of this is the Elan Valley supply from Dŵr Cymru (Welsh Water) to Severn Trent Water. We understand that the reservoirs are owned by Dŵr Cymru and the interconnector pipe is owned by Severn Trent Water.

### **3.4 Measuring the water supplied**

The parties to the bulk supply agreement need to know whether the water due to be supplied under the terms and conditions of the contract has been supplied. Also, most bulk supply agreements are likely to have charges based to some extent on the volume of water delivered.

So, a bulk supply agreement would need to specify how the water supplied is to be objectively quantified. In most cases, a meter will be used, which will need to measure the water supplied to the degree of accuracy specified in the agreement. To ensure the accuracy of meter readings, we suggest that meters should be tested in accordance with the Measuring Equipment (Cold-water Meters) Regulations 1988.

Even with testing, there can be occasions when a meter is found to be faulty. To prevent a possible impasse between the parties the bulk supply agreement could specify the mechanism for determining the volume of water supplied in this case.

### **3.5 Quality of the water supplied**

Water can vary in quality and there are existing bulk supplies for raw (untreated) water, partially-treated water and potable (drinking) water.

For example, a new appointee supplying a housing development is likely to require a potable water bulk supply for its customers. For potable water, the standards imposed by the WIA91 and the Water Supply (Water Quality) Regulations 2000 will apply to the bulk supply. It is the company receiving the bulk supply that is responsible for the quality of water supplied to its customers but the supplying company must inform the recipient company of any events that might lead to unwholesome water being supplied to consumers.

For partially-treated non-potable water, the agreement might state the quality of the water to be provided and how it is to be assessed. This could be done by specifying the treatment process to be applied to the non-potable water before it is supplied or by specifying the water quality parameters the non-potable water should meet.

Water companies, working through Water UK, have already developed a water quality protocol which can be added to existing bulk supply agreements that do not deal with water quality issues sufficiently well. These terms could also be used in new agreements.

### 3.6 Adjusting prices

As discussed in section 3.1, price terms can be set in different ways. For example, some bulk supply agreements include volumetric charges for the supply of water. Other bulk supply agreements include contributions to the capital costs of building the bulk supply assets or the ongoing costs of operating the bulk supply.

As well as setting out the price terms, the bulk supply agreement might also explain how those price terms are to be adjusted to allow for inflation. Typically, bulk supply agreements include provisions for annual adjustments to the price terms to allow for inflation, although the parties could agree different frequencies of adjustment. The adjustments could be by set amounts, percentages or linked to measures of specific costs or general inflation. If the parties agree that no adjustment is to be made to the price, they could set this out for clarity.

A bulk supply agreement could allow for an interim review of price terms, in which case it should set out how that review is to take place. In 2006, we determined some of the terms of a bulk supply from Southern Water to South East Water<sup>3</sup>. One of the issues was whether the price terms, which included an annual increase, should be reviewed at any point during the 20-year contract period. An advantage of not reviewing the price terms is that both parties have certainty over the price for the duration of the agreement. An advantage of reviewing the price terms is that they can be adjusted for unforeseen circumstances. In the circumstances of the Southern Water and South East Water case we determined that there should be a review of price and volume terms at ten-year intervals after the agreement started.

Where charges for a bulk supply are linked to large user tariffs (as they usually are where the recipient of a bulk supply is a new appointee), the agreement might explain how the unit price changes, depending on the volume taken. For example, a

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<sup>3</sup> 'RD 1/06: Section 40 order determining terms for a bulk supply', Ofwat, March 2006.

new appointee's demand often increases over time due to new connections within its appointed area, which can change the consumption band which applies and the associated unit price.

### **3.7 Interruptible or firm supply**

The receiving company might want a different level of supply security from its bulk supply depending on its circumstances. For example, the receiving company might be able to use its own storage or alternative water sources to accept temporary interruptions to its supply in return for a lower price while the supplying company might be able to save costs by interrupting the bulk supply.

So, the bulk supply agreement could include details of any allowed interruptions. If it did so, it would need to explain the number and duration of interruptions that the supplier could make and under what conditions interruptions could happen. There might be a link between when the supplier can make interruptions and interruptions for planned maintenance, emergencies and water shortages.

Interruptible supplies are well established in other sectors. For example, in the gas sector National Grid can interrupt supplies to certain sites for up to 45 days in each year and in return National Grid reduces its transportation charge. Several water companies – for example, Anglian Water and Severn Trent Water – already offer forms of interruptible or stand-by supplies to their large user customers.

### **3.8 Interruptions of supply to carry out planned maintenance**

Planned maintenance can disrupt the flow of water from the supplying to the receiving company. The receiving company will want to know when maintenance will happen so that it can make alternative arrangements to supply its customers.

The bulk supply agreement could put a requirement on the supplier to minimise the frequency and length of any disruption to the bulk supply as a result of planned maintenance work. The agreement would need to define what is meant by 'planned maintenance'.

The agreement might set out the process by which the supplier would consult the recipient over the timing of planned maintenance. It could specify how far in advance the supplier should notify the recipient of the planned maintenance. The agreement might also allow a reasonable period for the recipient to express its views and could require the supplier to consider them before making a final decision on the timing and duration of the maintenance.

### 3.9 Co-operation in emergency situations

Emergency situations could arise during the period of a bulk supply agreement that affect the quality of the water supplied, the volumes of the water supplied or some other aspect of the bulk supply agreement. It would be helpful if the agreement defined what is meant by an ‘emergency’ and explained how the parties would deal with one.

Obligations on parties to co-operate in an emergency could include:

- co-operating to prevent an emergency from occurring;
- notifying the other party of the existence and cause, if known, of the emergency;
- ensuring, as far as is reasonably practicable, that any emergency has the minimum possible effect on the supply of water to either party’s customers;
- agreeing reductions in supply to both sets of customers where this is reasonable to prevent or mitigate the effects of an emergency;
- ensuring that priority is given to vulnerable customers if a supply of water is restricted because of an emergency, and co-operate in agreeing categories of vulnerable customers;
- agreeing how, if required, alternative sources of water such as bowsers will be provided. For new appointees, it may be more efficient to have alternative sources provided or co-ordinated by one party;
- using all reasonable endeavours to restore the supply;
- investigating the cause of an emergency that has occurred; and
- sharing any lessons learned to prevent a recurrence of the emergency.

### 3.10 Co-operation at times of water shortage

One of the biggest concerns companies have about bulk supply agreements is what happens during times of water shortage. The agreement could address this concern by specifying what is to happen during a time of water shortage. It might also place an obligation on both parties to co-operate in such situations.

The terms relating to water shortages could include:

- an obligation for the supplier to notify the recipient when the initial drought triggers in the relevant supply zone are reached;
- a definition of the circumstances under which the supplier may limit the water it supplies under the agreement;

- an obligation for the supplier to notify the recipient if it intends to apply for a Drought Order or impose a temporary ban on the use of water by some or all of its customers; and
- provisions relating to the actions the recipient should take to reduce water taken from the bulk supply in the event of a water shortage.

If the parties have agreed an interruptible contract (see section 3.7) the supplying company might be able to use the interruption terms to mitigate the water shortage.

### 3.11 Liability for planned and unplanned interruptions

There are several reasons why water from a bulk supply might be interrupted, including interruptions under the terms of the agreement (section 3.7), for planned maintenance (section 3.8), emergency situations (section 3.9), water shortages (section 3.10) and unplanned interruptions by the supplier for reasons of operational or commercial expediency.

To give the recipient comfort that it would be adequately compensated for losses arising due to unplanned non-emergency interruptions, the agreement might include categories of costs such as:

- costs incurred in securing alternative sources of supply. Companies may wish to include a non-exhaustive list of potential alternative sources that would need to be deployed – for example, tankered water supplies, bottles or bowsers; and
- [GSS \(guaranteed standards scheme\)](#) payments to customers.

To provide greater certainty, the agreement might allow for liquidated damages, that is, an estimate in advance of the losses the recipient might incur if the supply was not made available.

To limit the supplier's risk exposure, the liabilities in the agreement might be capped.

### 3.12 Duration

Bulk supplies often involve one or both of the parties making investments in their water resource and (or) network assets to provide the service. Some of these assets might be specific to the bulk supply and might not be usable for alternative supplies. For example, the supplying company might be able to redeploy a new water resource to supply its own customers, but it might not be able to use an interconnection pipe for other revenue-earning purposes.

It might take many years for the revenues from the bulk supply to cover the cost of the dedicated bulk supply assets. A bulk supply agreement might therefore need to be long enough to allow for the parties to recover the costs of the assets.

On the other hand, a long duration agreement can create problems if circumstances change and the agreement is no longer beneficial for one or both parties. This issue is discussed in section 3.14. Of course, companies must ensure that their bulk supply agreements comply with relevant legislation including competition law; in particular long duration agreements might be considered anti-competitive.

### **3.13 Dispute resolution**

Disputes might arise from time to time with regard to the bulk supply agreement. It would be sensible for the agreement to include a provision to resolve disputes. We suggest that this comprises an internal escalation process that must be followed before a matter may be referred to arbitration, the courts or some other form of formal adjudication.

Some energy contracts specify a time limit after which a party cannot raise a dispute about the other party's previous performance of the contract. For example, the contract might specify that parties must raise a dispute about an incorrect payment within a year of the payment being made.

The dispute resolution provision relates to disputes over the operation of the bulk supply agreement. This is different from a failure to agree the terms of a bulk supply agreement, or a variation or termination of an agreement, which can be submitted to Ofwat for determination as provided for in sections 40 and 40A of the WIA91.

### **3.14 Termination**

The agreement should set out how it can be terminated by either or both parties.

Ways in which a bulk supply agreement could be terminated include:

- on a date specified in the agreement;
- on either party giving a specified period of notice;
- by mutual agreement;
- if the recipient stops being the water company for an area that is supplied by the bulk supply;
- if either party ceases to be an appointed water company;

- if Ofwat makes an order under section 40A of the WIA91 terminating the agreement;
- if there is a material breach of the contract that is not remedied. A material breach could include repeated failure to pay on time or a one-off failure to pay on time which was not corrected within a specified period, or a persistent failure to supply; and
- if the other party becomes insolvent or takes steps to shut down its business.

As discussed in section 3.12, a bulk supply agreement might need to be long enough to allow the parties to recover the costs of the assets involved in the supply. It might also need to be flexible to allow for changing circumstances.

A possible approach would be for the agreement to allow termination after an initial set period, subject to notice.

If the agreement may be terminated on notice, it would be helpful for the notice period to be sufficiently long to enable the party that received the notice to refer the matter to Ofwat, and for Ofwat to make a determination.

An alternative approach is for the agreement to run for a fixed period, with no provision for termination on notice. This would require the parties to renegotiate the agreement at the expiry of the fixed term.

There are several existing bulk supply agreements that pre-date privatisation in 1989 that run in perpetuity. These agreements can create problems because circumstances can change over time and a party which finds the contract to be unfavourable cannot end the agreement.

## **Appendix 1: List of consultation respondents**

### **Existing appointed companies**

- Affinity Water
- Anglian Water
- Dŵr Cymru
- Northumbrian Water
- Portsmouth Water
- Severn Trent Water
- South West Water
- Thames Water
- United Utilities

### **New appointee**

- SSE Water

### **Quality regulator**

- Drinking Water Inspectorate

### **Environmental organisation**

- WWF

### **Legal adviser**

- Greenberg Traurig Maher LLP

## **Appendix 2: Summary of consultation responses**

Section 2 summarises key points from the responses, addressing the broad scope and status of the draft guidance. We also received many detailed comments on the content, which we summarise here. The numbered headings below correspond to the subsections of section 4 in the consultation document and to the subsections of section 3 of this document. Further, general issues are covered at the end of this appendix.

### **1. Price and non-price terms**

Two respondents commented on the bulleted list of what the price terms could include. One mentioned capital contributions associated with establishing the connection and we have widened ‘connection charge’ to ‘capital contribution to the connection cost’.

### **2. Facilitating the addition of new sites or connections**

Several respondents argued that the specific features of each bulk supply may make adding it to an existing agreement inappropriate. This might be true in some cases, in which case the negotiating parties could choose to ignore subsection 3.2. However, for a new appointee applying for more than one bulk supply, facilitating the additions of new sites or connections could be useful. Therefore we have not changed subsection 3.2.

### **3. Ownership of and responsibility for the assets**

Respondents recognised the importance of clarity about who owns and operates the assets used in a bulk supply.

One respondent recommended the inclusion of a detailed operational plan in the schedules to all bulk supply agreements. That plan should set out in detail the responsibilities and activities specific to each bulk supply and cover details such as a maximum rate of flow and increases or reduction in flow over time as well as emergency contact details. We have added this idea to subsection 3.3 as an example of how to address ownership of and responsibility for the assets.

## **4. Measuring the water supplied**

There were no comments and we have made no changes to this subsection.

## **5. Quality of water supplied**

At the request of the Drinking Water Inspectorate (DWI), we have added the supplying company's duty to inform the recipient company of any events that might lead to unwholesome water being supplied to consumers.

The DWI also asked us to refer to its information letter '[06/2012: Regulation 15 compliance arrangements](#)', which explains companies' duties for carrying out risk assessments of new sources. However, we think the existing text makes companies' duties in relation to potable water supplies clear. We have decided not to refer to information letter 06/2012 as it is only relevant to bulk supplies which involve new sources and this appears to be a matter for the exporting company rather than for the agreement between the negotiating parties. Two companies mentioned the 'Water quality protocol for bulk supply agreements' developed by water companies working through Water UK. Subsection 3.5 now suggests that companies might want to use this protocol in new agreements.

## **6. Adjusting charges periodically**

Two respondents explained how charges to new appointees are often linked to large user tariffs, and the tariff might change depending on the volume taken – for example, as new connections are added. We have added a paragraph saying this.

## **7. Interruptible or firm supply**

There were no comments on this subsection and we have only made minor drafting changes.

## **8. Interruption of supply to carry out planned maintenance**

There were no comments on this subsection and we have only made minor drafting changes.

## **9. Co-operation in emergency situations**

The DWI's response said that an emergency is likely to affect quality and (or) sufficiency of the water supply, both of which have the potential to affect public health; it therefore wanted us to say it was "essential" rather than "helpful" for the agreement to define what was meant by an 'emergency' and to explain how the parties would deal with one. We have not changed the wording of subsection 3.9 because it is for the negotiating parties to decide how they deal with emergency situations. The effect of problems with a bulk supply on customers varies on a case-by-case basis. For example, a company may have alternative sources of supply and this could be reflected in how the parties handle emergency situations.

At one respondent's suggestion, we have added a bullet point about how alternative sources of supply such as bowsers are provided during emergency situations, particularly for new appointees.

## **10. Co-operation at times of water shortage**

One company said the guidance should also set out the principle that household customers of the existing water company and the new appointee should be treated equally. This might be appropriate in certain situations – for example, if a new appointee has no other source of supply. However, we have not included this principle because it might not be appropriate in other situations.

## **11. Liability for interruptions**

One respondent mentioned that one of the barriers to trading is that companies prefer to own and control their water supplies, and remedies for breaches of the agreement are therefore important. We agree and we have included examples of remedies in subsection 3.11.

Following internal discussion, we have also added text on liquidated damages and the capping of liabilities.

## **12. Duration**

One respondent discussed the need for longer agreements to recover capital investments. We already mention in subsection 3.12 that a bulk supply agreement might need to be long enough to allow for the parties to recover the costs of the assets. We have made no significant changes to subsection 3.12.

## 13. Dispute resolution

We received no comments and have made no changes.

## 14. Termination

Two respondents recognise the need for changes to bulk supplies and welcome the termination clause. However, as respondents have also noted, where bulk supplies require capital investment, that capital needs to be recovered. Accordingly we have added a bullet point – ‘termination on notice’ – and discussion of termination on notice after an initial period that allows recovery of capital.

## Other issues

Respondents raised several other issues, as follows.

Two respondents were concerned with changes of circumstance that make the agreement inappropriate, citing in particular statutory and regulatory changes and specifically the current Water Bill. This is a matter for the implementation of the Water Bill changes and how they affect existing agreements. The framework is concerned with new agreements and so we have not included this point.

Two water companies raised issues about the links between bulk supplies and water resource management plans. Water companies need to liaise with each other about future usage of bulk supplies and the agreement could address this point. While bulk supply agreements are sometimes needed to deliver water resource plan commitments, we consider that the agreements themselves do not need to refer to water resource management plans and hence we have not included the point in our checklist.

One respondent asked for guidance on water for firefighting supplies. Each appointed company is responsible for providing firefighting supplies in its area and so we have not added a specific reference to firefighting supplies. If there are specific requirements, these could be included in the services to be provided (see subsection 3.1).

One company had ‘legacy’ perpetual contracts that it considered were no longer appropriate, and urged us to allow these agreements to be determined under the provisions of sections 40 and 40A of the Water Industry Act 1991. Section 40A says that if a party to a bulk supply contract applies to Ofwat we may vary or terminate – that is, ‘determine’ – a contract, provided we are satisfied the parties cannot reach

agreement themselves. However, we may decide not to change the contract. This document is designed to help companies make new bulk supply agreements and is not concerned with legacy contracts, so we have not included the point, although we do discuss termination of agreements in section 3.14, to help avoid such problems in future.

One respondent thought we should include wastewater bulk connection and sludge trading agreements in the framework, helping promote these activities and the potential associated efficiencies. We have developed this framework in relation to water bulk supplies because of the evidence we and other parties have gathered on the significant unrealised benefits from water trading. We are not expanding the framework at present to cover wastewater bulk connections and sludge trading agreements as we did not find similar evidence of unrealised benefits. However, the Water Bill states that Ofwat may issue one or more codes setting out procedures for negotiating and renegotiating agreements for 'main connections into sewerage systems' as well as for bulk supplies of water. If and when the bill is enacted we might issue codes relating to wastewater bulk connection agreements.



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