

**Consultation on Ofwat's section 13
proposal to modify the licences of
Dee Valley Water and Dŵr Cymru
– condition A**

About this document

This document invites comments on our proposal to modify condition A of the conditions of appointment (licences) of Dee Valley Water plc ('Dee Valley Water') as a water undertaker and Dŵr Cymru Cyfyngedig ('Dŵr Cymru') as a water and sewerage undertaker. The proposed change will acknowledge within the licences of these companies the existence of a separate policy, legislative and regulatory framework in Wales.

Under section 13 of the Water Industry Act 1991 (WIA91), we are able to modify the conditions of a company's licence if it agrees to the change we are proposing to make.

This document and the attached appendix is a Notice under section 13 of the WIA91.

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Responding to this consultation

We invite stakeholders to comment on our proposed modification by **12 December 2013**. Companies should also indicate their acceptance or otherwise of the proposed modification by this date. You can email your responses to ingrid.olsen@ofwat.gsi.gov.uk or post them to:

Finance and Networks Division
Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA.

If you wish to discuss any aspect of this document, please direct your enquiry to Ingrid Olsen on 0121 644 7525 or by email to ingrid.olsen@ofwat.gsi.gov.uk.

We will publish responses to this document on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004.

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory 'Code of Practice' which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

1. Background

Responsibility for water policy and legislation in Wales is largely devolved to the Welsh Government. The Welsh Government's jurisdiction under WIA91 covers those companies which serve areas that are wholly or mainly in Wales. Dee Valley Water and Dŵr Cymru (the Welsh companies) operate water (and, for Dŵr Cymru, wastewater) networks in areas that are mainly in Wales.

The Welsh Government is expected to publish a consultation on its Water Strategy for Wales later this year and future developments in Wales may be different to those in England. An example of the current difference between the Welsh companies and English companies (that is, those which serve areas wholly mainly or mainly in England) is the different switching thresholds that apply under the water supply licensing framework.

We are proposing to make a change so that the existence of a separate policy, legislative and regulatory framework in Wales is recognised within the Welsh companies' licences. This modification will make sure that these licences reflect the way in which this framework applies in practice.

In developing our proposed change, we have discussed the planned approach with the Welsh Government, Dee Valley Water and Dŵr Cymru.

2. What are the changes that we are proposing?

We are proposing to insert a new sub-paragraph into condition A of the Welsh companies' licences which will state that all licence conditions will, so far as is consistent with other statutory duties and powers, be construed in accordance with relevant considerations specific to Wales, including the relevant legislative and regulatory frameworks applicable to Wales.

We are also making a minor change to reflect the full legal name of Natural Resources Wales (which became operational on 1 April 2013), which is currently referred to within the Welsh companies' licences.

These two changes are set out in full in appendix 1.

3. Why do we need to make the changes we are proposing?

Given the separate policy, legislative and regulatory framework in Wales, the licences of the Welsh companies should reflect this. The change we are proposing will address this issue.

As an example, this issue was highlighted in 2012, when we [consulted](#) on changes to conditions A, B and C of all companies' licences to enable us to set price controls at the 2014 price review and for companies to work with us to develop more targeted price controls. In relation to this latter commitment, Welsh Government, Dee Valley Water and Dŵr Cymru all raised a concern in their responses as to how this would reflect the specific policy and legislative framework in Wales.

The change we are proposing will mean that the interpretation of this commitment, together with the rest of the licence, is subject to considerations specific to Wales.

4. Next steps

We would like responses to this document, including formal responses from Dee Valley Water and Dŵr Cymru to our proposals, by **12 December 2013**.

Subject to their agreement to our proposals, we will amend both companies' licences by the end of 2013.

Appendix 1: Proposed modifications to condition A

New sub-paragraph (3) to be inserted into paragraph 2 (shown in bold):

- 2 In construing these Conditions:
- (1) the heading or title of any Condition or of any paragraph of any Condition shall be disregarded; and
 - (2) any description of the purposes of a Condition shall be construed subject to the provisions of the rest of the Condition in which that description appears; and
 - (3) **the Conditions will so far as is consistent with other statutory duties and powers, be construed in accordance with relevant considerations specific to Wales, including the relevant legislative and regulatory frameworks applicable to Wales.**

New definition to be added into paragraph 3:

“Natural Resources Wales” means the Natural Resources Body for Wales;



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