

# Licensing and policy issues in relation to the opening of the non-household retail market – appendices

## Contents

Appendix A: Draft of proposed WSSL conditions	2
Appendix B: Changes to the Appointment conditions	25
Appendix C: Glossary	35

## **Appendix A: Draft of proposed WSSL conditions**

### **A1 Structure of this appendix**

Section 4.2 of the main document set out our proposals for the structure and standard conditions of the new supply licence covering water and wastewater retail activities. In section 4.2.2 we set out our thinking on conditions that are closely related to those that already exist in the current supply licence and where we think the proposed changes are of a routine nature. Section 4.2.3 then discussed three areas in which we think there is a possible need for a new standard licence condition.

Section A2 provides a more detailed summary of the proposed changes that we think are of a routine nature. Section A3 then provides almost complete draft text of the proposed licence conditions. This text also includes the proposed approach to ensuring equivalence of treatment for retailers, with provisions in respect of non-discrimination and arm's length transactions.

Section A4 then provides the draft text for a new licence condition covering the enablement of the market arrangements code.

### **A2 Summary of proposed amendments to the standard conditions of the new supply licence**

Table A1 below summarises the routine amendments proposed to each of the existing WSL standard conditions to create the new standard licence conditions. Table 1 in section 4.2.2 of the main document provided a summary of the proposed changes. Table A1 covers each condition individually, identifies those where changes are not proposed and gives some additional detail on the proposed changes. The full draft text of the proposed licence conditions is set out in section A3.

**Table A1 Proposed amendments to existing WSL conditions**

<b>WSL condition</b>	<b>Nature of proposed amendments</b>
<b>1: Citation, interpretation and effect of certain provisions</b>	Condition carried over, with additional definitions and refresh of terminology.
<b>2: Conduct of Licensee</b>	Existing obligations carried over and drafting amended to cover wastewater as well as water.  June 2015 consultation on consumer protection may create additional obligations to customers.
<b>3: Certificate of adequacy</b>	Condition adapted in order to make it clearer that it applies across a range of circumstances, including changes in the scale of the portfolio of customers served by the licensee.
<b>4: Emergencies and drought</b>	Condition carried over, with some wording changes to ensure alignment with Part E of the Operations Terms in Wholesale Retail Code.
<b>5: Provision of information to relevant undertakers</b>	Condition carried over, with some wording changes to provide coverage of wastewater as well as water.
<b>6: Customer Transfer Protocol</b>	Condition no longer required – will be replaced by systems and procedures hosted by Market Operator.
<b>7: Area of operation and arm’s length transactions</b>	In area trading ban not carried over.  Requirements for arm’s length transactions and non-discrimination added as explained in section 4.2.3 of main document.  Removal of requirement to notify Ofwat if licensee becomes or ceases to be related to an undertaker.
<b>8: Provision of information to Authority</b>	Condition carried over unchanged.
<b>9: Licence fees</b>	Condition carried over with minor changes in wording.
<b>10: Revocation</b>	Condition carried over with minor changes in wording.
<b>11: Notice of revocation</b>	Condition carried over with minor changes in wording.

**Note to table:** conditions 12, 13 and 14 of the current WSL relate only to combined supplies. The proposed treatment of these is explained in section 4.6.2 of the main document.

## A3 Draft text for the proposed WSSL standard conditions

### WATER INDUSTRY ACT 1991: SECTION 17H AND 17HA

The Secretary of State, in exercise of the powers conferred on [her][him] by sections 17H(1) and 17HA(1) of the Water Industry Act 1991, having consulted where appropriate the National Assembly for Wales, hereby determines that the following conditions shall be standard conditions for the various authorisations under all water and sewerage licences:

#### PART A

#### STANDARD CONDITIONS OF WATER AND SEWERAGE LICENCES

##### 1. Citation, interpretation and effect of certain provisions

(1) These conditions are the Standard Conditions applicable to all Water Supply and Sewerage Licences.

(2) In these conditions unless the context otherwise requires —

“the Act” means the Water Industry Act 1991;

“the Authority” means the Water Services Regulation Authority;

“the Council” means the Consumer Council for Water;

“information” includes documents and anything contained in any records, accounts, estimates or returns;

“Licence” means the document issued by the Authority comprising the conditions applicable to the Licensee’s authorisations;

“the Licensee” means the [company][person] which is the holder of the Licence to which these and such other conditions as are directed by the Authority apply;

“Market Arrangements Code” has the meaning given in standard condition [-];

*{Drafting note – please refer to proposed text in Appendix A4}*

“Part B Direction” means a direction issued by the Authority specifying that the standard conditions in Part B are to have effect in the Licence and, if appropriate the area within which the Licensee will be required to comply with the standard condition(s) in Part B;

“Part C Direction” means a direction issued by the Authority specifying that the standard conditions in Part C are to have effect in the Licence and, if appropriate the

area within which the Licensee will be required to comply with the standard condition(s) in Part C;

“Part D Direction” means a direction issued by the Authority specifying that the standard conditions in Part D are to have effect in the Licence and, if appropriate the area within which the Licensee will be required to comply with the standard condition(s) in Part D;

“qualifying water supply licensee” and “qualifying sewerage licensee” have the same meaning as in section 23 of the Act (meaning and effect of special administration order);

“relevant undertaker” means either a water undertaker or a sewerage undertaker; and

“supply system” has the meaning given in section 17B(5) of the Act;

(3) Any words or expressions used in the Act and/or the Water Act 2014 shall, unless the contrary intention appears, have the same meaning when used in this Licence.

[(4) Certain conditions contain definitions relevant to that Condition]

(5) In construing this Licence the heading or title of any condition shall be disregarded.

(6) In these conditions, any reference to any provision of—

(a) any subordinate legislation (including these conditions), (b) any Act, or

(c) any code, agreement or statement

is a reference to that provision as amended, supplemented, transferred, novated, revised or replaced from time to time.

*{Drafting note - Definitions and interpretation provisions to be revised following consultation on conditions to be included.}*

## **2. APPLICATION OF PARTS OF STANDARD CONDITIONS**

*{Drafting note – Section 4.1 of the main document comments on the proposed structure of the new licence}*

### **How Parts of this licence are given effect**

(1) Other than in relation to Part A of these Standard Conditions, a Part or relevant Parts of these standard conditions will have effect in a Licence if:

(a) the Secretary of State has provided, by a scheme made under Schedule 11 of the Water Act 2014 that it will have effect (and, where this the case, such provision shall be treated for all the purposes of this condition as if it were a Part B Direction, Part C Direction and/or Part D Direction (as appropriate) given by the Authority); or

(b) the Authority gives:

(i) a Part B Direction to the Licensee under paragraph 2(3);

(ii) a Part C Direction to the Licensee under paragraph 2(4); and/or

(iii) a Part D Direction to the Licensee under paragraph 2(5).

(2) If a Part of these standard conditions does not have effect in this Licence, the Licensee will not be required to comply with any of the requirements of that Part.

### **Part B Direction**

(3) After the Authority receives an application under the *[refer to appropriate licence application process to be used if an existing licensee applies for an additional authorisation or other means of giving notice if applicable]* it may give a Part B Direction to the Licensee providing that the standard conditions in Part B are to have effect in the Licence.

### **Part C Direction**

(4) After the Authority receives an application under the *[refer to appropriate licence application process to be used if an existing licensee applies for an additional authorisation or other means of giving notice if applicable]* it may give a Part C Direction to the Licensee providing that the standard conditions in Part C are to have effect in the Licence.

### **Part D Direction**

(5) After the Authority receives an application under the *[refer to appropriate licence application process to be used if an existing licensee applies for an additional authorisation or other means of giving notice if applicable]* it may give a Part D Direction to the Licensee providing that the standard conditions in Part D are to have effect in the Licence.

### **Variation of terms**

(6) If a Part has been given effect in the Licence and the Licensee applies to the Authority in writing:

(a) for a variation of the terms under which that Part of the standard conditions has effect in the Licence; or

(b) for that Part of the standard conditions to stop having effect in the Licence,

the Authority may approve that variation or cessation and specify the date on and from which it will have effect.

### **Interpretation**

(7) References in a condition to a Part of these standard conditions, the standard conditions in a Part and the requirements of a Part are references to that part, those conditions and those requirements as a whole or, as the case may be, in part.

### **3. Conduct of Licensee**

*{Drafting note – Ofwat envisage that there may be some reference to assurance and market readiness requirements once these have been developed by OW.}*

The Licensee shall ensure that all such arrangements have been made as are necessary for securing that—

(a) it is and continues to be able to meet its obligations under—

(i) its Licence; and

(ii) any statutory requirement imposed on it in consequence of its Licence, including its obligations under terms and conditions agreed or determined under [section 66D] of the Act (sections 66A to 66C: determinations and agreements); and

(b) it has sufficient product and public liability insurance for the activities authorised by its Licence.

### **4. Certificate of adequacy**

(1) No later than 1st April in each year the Licensee shall submit a prescribed certificate to the Authority in a form determined by the Authority, certifying—

*{Drafting note – form of certificate will be considered further in light of consultation responses on usage of certificate}*

(a) that all of the arrangements required by paragraph 3 above are in place; and

(b) in particular, that the Licensee has, and will have until 31st March in the following year, all the management, financial, technical, operational and other resources



needed or securing that it is able to meet the obligations mentioned in paragraph 3 above.

(2) For the purposes of sub-paragraph (1) “a prescribed certificate” means—

- (a) a certificate signed and dated after 1st March in that year by each director of the Licensee; or
- (b) a certificate signed and dated by any authorised director or the company secretary of the Licensee if authorised for that purpose, such authorisation having been given by resolution of the board of directors of the Licensee at a duly convened meeting of that board held after 1st March in that year, and accompanied by a certified copy of the minutes of that meeting.

(3) Where any notice served on the Licensee by the Authority so requires, the certificate submitted under this paragraph shall be supplemented at such time by such verification reports as the notice may reasonably require.

(4) The Licensee shall notify the Authority immediately if at any time it becomes aware—

- (a) that it is or will be unable to certify as to the matters set out in sub-paragraph (1),  
or
- (b) of any actual or expected change of circumstance which would or might prevent the Licensee from being able to submit a certificate under sub-paragraph (1) if the obligation to do so fell at the time of the change of circumstances.

## **5. Emergencies and unplanned events**

(1) The Licensee shall, for relevant purposes, comply with any—

- (a) reasonable instructions given to it by a relevant undertaker in relation to matters specified in a drought plan, [dry weather plan and associated processes] which are not the subject of a drought order or drought permit under Chapter 3 of Part 2 of the Water Resources Act 1991; or
- (b) instructions given to it by a relevant water undertaker during any emergency (save any which are manifestly unreasonable); or
- (c) instructions given to it by a relevant water undertaker in relation to any water quality incidents or any pollution incidents.

(2) For the purposes of sub-paragraph (1)—

- (a) “drought plan” shall be construed in accordance with section 39B of the Act (drought plans: preparation and review); and

(b) “relevant purposes” are the purposes of–

- (i) ensuring that water quality is not adversely affected;
- (ii) avoiding prejudice to the integrity of the supply system;
- (iii) protecting customers;
- (iv) mitigating adverse effects upon the environment;
- (v) maintaining essential supplies; or
- (vi) conserving supplies.

(3) Any question as to the reasonableness of any instructions given under sub-paragraph (1)(a) shall be resolved by referring that question to the Authority for its determination.

(4) A reference under sub-paragraph (3) shall have the effect of suspending the instructions so referred pending the Authority’s determination.

(5) Any instructions given under this paragraph shall not include requirements to provide information.

## **6. Provision of information to relevant undertakers**

(1) In so far as the provision of information to a relevant undertaker is not provided for by or under any enactment, the Licensee shall provide any relevant undertaker with such information as the undertaker reasonably requires—

- (a) for the purposes of carrying out its functions;
- (b) to determine whether the Licensee has sufficient product and public liability insurance for the activities authorised by its licence;
- (c) to comply with any condition of the undertaker’s appointment;
- (d) in relation to national security or civil emergencies; or
- (e) to comply with any reasonable request for information made by the Environment Agency or the Natural Resources Body for Wales

(2) The Licensee may impose reasonable conditions on the use which the relevant undertaker may make of information provided under this paragraph.

(3) Any question as to the reasonableness of—

- (a) any requirement to provide information under sub-paragraph (1); or

(b) any condition proposed by the Licensee under sub-paragraph (2),

shall be resolved by referring that question to the Authority for its determination.

(4) A reference under sub-paragraph (3) shall have the effect of suspending the requirement so referred pending the Authority's determination.

(5) The Licensee shall not be required under this paragraph to provide any information which would be protected from disclosure or production in proceedings in the High Court on grounds of legal professional privilege.

(6) The Licensee shall immediately inform the relevant undertaker of relevant details—

(a) if the Licensee becomes aware of any actual or potential incident which adversely affects or is likely adversely to affect—

(i) water quality;

(ii) water pressure;

(iii) continuity of supply; or

(iv) any other matter relating to the relevant water undertaker's supply system; or

(b) if a special consumer occupies or is likely to occupy any premises which the Licensee supplies.

(7) The Licensee shall inform the relevant water undertaker as soon as reasonably practicable if—

(a) any premises which the Licensee supplies are no longer occupied by any special consumers; or

(b) the Licensee has any planned interruptions in supply.

(8) For the purposes of sub-paragraph (6), an incident includes regulatory infringements which may put the Licensee or relevant water undertaker at risk of supplying water which is unwholesome as determined under section 67 of the Act (standards of wholesomeness) or unfit for human consumption within the meaning of section 70 of the Act (offence of supplying water unfit for human consumption).

(9) For the purposes of sub-paragraphs (6) and (7), a special consumer is a person, or member of a class of persons, who—

*{Drafting note - Definition of special consumer and person will be the subject of further work to be considered alongside the WRC}*

- (a) the Licensee and the relevant undertaker agree, or
- (b) the Authority specifically or generally determines by relevant notice, regularly requires water urgently on medical or other grounds.

(10) Under sub-paragraph (9)—

- (a) a determination shall not have effect unless, before making the determination, the Authority has consulted such persons as it considers appropriate; and
- (b) a “relevant notice” is a notice published in such manner as the Authority considers appropriate and served on the Licensee.

#### **[7. Further obligations to relevant undertakers]**

(1) The Licensee shall carry on the activities authorised by its Licence in a manner which does not impair or put at risk the proper, efficient and economical performance by any relevant undertaker of its functions.

(2) The Licensee shall not use or disclose information received from a relevant undertaker in the course of or in contemplation of its dealings with that undertaker under section 66AA to the Act (Water supply from water undertaker) and section 117A (Use of undertaker’s sewerage system) except—

- (a) to the minimum extent necessary for those dealings;
- (b) where required or permitted by law; or
- (c) where otherwise agreed with the relevant undertaker.

*{Drafting note - This requirement will be considered further to ensure consistency with relevant Codes}*

#### **8. Arm’s length transactions**

(1) The Licensee shall not at any time enter into any transaction with a relevant undertaker except at arm’s length, if at that time the Licensee is related to that relevant undertaker.

(2) The Licensee shall not show undue preference towards, or undue discrimination against, a relevant undertaker to which it is related, as compared with any other relevant undertaker.

(3) For the purposes of this paragraph 8 the Licensee is related to a relevant undertaker if their enterprises are under common ownership or common control (within the meaning those expressions have in section 26(1) of the Enterprise Act 2002 (enterprises ceasing to be distinct enterprises)).

## **9. Provision of information to the Authority**

(1) The Licensee shall provide the Authority with such information as the Authority may by notice reasonably require for the purpose of carrying out its functions under the Act.

(2) Information required under this condition shall be provided in such form and manner, at such time and place, and be accompanied by or supplemented by such explanations, as the Authority may reasonably require.

(3) The Licensee shall not be required under this paragraph to provide any information which would be protected from disclosure or production in proceedings in the High Court on grounds of legal professional privilege.

## **10. Licence fees**

(1) The Licensee shall pay an annual fee to the Authority determined in accordance with the following provisions of this paragraph.

(2) The fee shall be paid no later than the thirtieth day after the day on which the Authority serves notice on the Licensee of the amount of the fee for the year in question.

(3) Subject to sub-paragraph (5), the fee for any year shall be the amount determined by the Authority to be the regulatory cost for that year of the Licence.

(4) For the purposes of this paragraph, the regulatory cost for any year of the Licence is—

(a) the Licensee's share of the estimated costs of the Authority for that year in relation to the water and sewerage licensing regime; plus

(b) the Licensee's share of the estimated costs of the Council for that year in relation to the water and sewerage licensing regime; plus

(c) if in the preceding year there was a subsisting reference under section 17K of the Act (Modification references to competition authority) which related to the Licensee's water supply licence—

(i) in the case of a reference under section 17K(1) (references in relation to activities authorised or regulated by a particular licence), the whole of the costs of the Competition and Markets Authority for that year in connection with the reference; and

(ii) in the case of a reference under section 17K(2) (references in relation to activities authorised or regulated by retail licences or combined licences), the Licensee's share of the costs of the Competition and Markets Authority for that year in connection with the reference.

(5) The fee for any year shall be adjusted to take account of the Licensee's share of any under-estimate or over-estimate of the regulatory cost for any earlier year if—

(a) the under-estimate or over-estimate has not been previously taken into account; and

(b) the Licensee held a Licence during the earlier year in which the under-estimate or over-estimate occurred.

(6) For the purposes of sub-paragraphs (4) and (5), the Licensee's share of costs and any under-estimate or over-estimate shall be determined in accordance with general principles specified by the Authority and set out in a notice, published in such manner as the Authority considers appropriate and served on the Licensee.

(7) For the purposes of sub-paragraph (6), "general principles" means principles which are the same for all Licensees but which may vary from one year to another.

(8) For the purposes of sub-paragraph (4)(b) and (c), the estimated costs of the Council and the costs of the Competition and Markets Authority respectively shall be such amounts as the Authority shall determine to be the Council's estimated costs or the Competition and Markets Authority's costs, after consulting the Council and the Competition and Markets Authority respectively.

(9) For the purposes of sub-paragraph (4)(c), a reference under section 17K(2) shall be taken to have related to the Licensee's water supply licence if—

(a) the Licensee held a Licence during all or part of the preceding year; and

(b) the reference was related to any matter related to the carrying on of any activities authorised or regulated by the Licences that grant a particular authorisation or combination of authorisations).

(10) For the purposes of this paragraph, "year" means a period of 12 months beginning on 1st April.

## **11. Revocation**

(1) A licence subject to these Conditions may be revoked by notice served on the Licensee by the Secretary of State or, with the consent of the Secretary of State or in accordance with

a general authorisation given by [her][him], by the Authority, in any of the circumstances specified in sub-paragraph (2).

(2) The circumstances mentioned in sub-paragraph (1) are—

- (a) the Licensee has consented to the revocation;
- (b) any information provided by the Licensee to the Secretary of State, an inspector within the meaning of section 86 of the Act (enforcement of water quality), the Authority or a relevant undertaker was false or misleading in a material particular;
- (c) there has been, is or is likely to be such a contravention by the Licensee of any principal duty, not being a contravention in respect of which a notice has been served under section 19(3) of the Act (notice that one of the exceptions to the duty to enforce applies), as is serious enough to make it inappropriate for the Licensee to continue to hold its Licence;
- (d) the Licensee has caused or contributed to a contravention by a relevant undertaker of any principal duty and the Licensee's actions or omissions were serious enough to make it inappropriate for the Licensee to continue to hold its Licence;
- (e) there has been, is or is likely to be such a contravention by the Licensee of the provisions of any enforcement order which—
  - (i) is not for the time being the subject-matter of proceedings brought by virtue of section 21(1) of the Act (proceedings challenging the validity of an enforcement order); and
  - (ii) if it is a provisional order, has been confirmed, as is serious enough to make it inappropriate for the Licensee to continue to hold its Licence;
- (f) the Licensee has failed to pay the whole or part of any fee due under paragraph 10 above and—
  - (i) the Authority demanded payment of that sum by notice served on the Licensee at least 14 days after it became due; and
  - (ii) any part of that sum remained unpaid 14 days after service of that notice;
- (g) the Licensee has failed to pay the whole or part of any penalty (together with any interest) imposed on it under section 22A(1) or (2) of the Act (penalties) and—
  - (i) the enforcement authority demanded payment of that sum by notice served on the Licensee after that sum became recoverable as a civil debt under section 22F of that Act (recovery of penalties); and

- (ii) any part of that sum remained unpaid for three months after the service of that notice;
- (h) the Licensee has failed to comply with the terms of–
  - (i) any order of the court under section 34 of the Competition Act 1998 (enforcement of directions); or
  - (ii) any relief or remedy granted by the court under sections 94 (rights to enforce undertakings and orders), 95 (rights to enforce statutory restrictions) or 167 (rights to enforce undertakings and orders) of the Enterprise Act 2002;
- (i) the Licensee or any director, manager, secretary or other similar officer of the Licensee has been convicted of an offence which the Authority considers is material to the activities authorised by the Licence;
- (j) any director, manager, secretary or other similar officer of the Licensee has been declared bankrupt or is disqualified under the Company Directors Disqualification Act 1986;
- (k) the Licensee has not supplied any water using the supply system of any water undertaker during a period of at least three years beginning on or after the date on which its licence came into force and ending on the date on which notice is served on the Licensee in accordance with paragraph 12 below;
- (l) the Licensee is or is likely to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts);
- (m) the Secretary of State has petitioned for the winding up of the Licensee under sections 124(4) and 124A of the Insolvency Act 1986 (petition for winding up on grounds of public interest);
- (n) a voluntary arrangement has been proposed in relation to the Licensee under section 1 of the Insolvency Act 1986 (those who may propose an arrangement) other than on terms which have been approved in writing by the Authority;
- (o) the Licensee has entered into a scheme of arrangement under Part 26 of the Companies Act 2006 (Arrangements and Reconstructions other than on terms which have been approved in writing by the Authority);
- (p) a receiver has been appointed in relation to the whole or a material part of the Licensee's assets or undertaking;



- (q) an administrator of the Licensee has been appointed under Schedule B1 of the Insolvency Act 1986 (administration), and the administrator cannot perform his functions so as to rescue the Licensee as a going concern on terms which have been approved in writing by the Authority;
- (r) a resolution has been passed for the winding up of the Licensee; or
- (s) a winding up order has been made in relation to the Licensee by a court of competent jurisdiction.

(3) In this paragraph—

“principal duty” means—

- (a) in relation to a water undertaker, a requirement imposed on the water undertaker by section 37 of the Act (general duty to maintain water supply system etc); and
- (b) in relation to the Licensee, any condition of its licence or any statutory requirement imposed it in consequence of its licence; and

“receiver” includes an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 (expressions used generally).

### **Notice of revocation**

**12.—**(1) A notice of revocation under paragraph 11(1) above must specify—

- (a) the matters relied on by the Secretary of State or the Authority to justify the revocation;
- (b) the date on which the revocation is to take effect; and
- (c) if the Secretary of State or the Authority relies on urgency as a reason for abridging the 30 day period mentioned in sub-paragraph (2), the reasons for this.

(2) Except in case of urgency or where the Licensee has consented under paragraph 10(2)(a) above, the date on which the revocation takes effect must not be less than 30 days after the date on which the Secretary of State or the Authority serves the notice under paragraph 10(1) above.

(3) At any time after the service of a notice under paragraph 10(1) above and before the date on which the revocation takes effect, the Secretary of State or the Authority may by further notice served on the Licensee vary or withdraw the notice under paragraph 10(1) above.

(4) If in case of urgency a notice of variation under sub-paragraph (3) abridges the notice period given by the notice under paragraph 10(1), the notice of variation must specify the reasons for this.

## **PART B – STANDARD CONDITIONS APPLICABLE TO WATER SUPPLY LICENCES ONLY**

1.

(1) Where the Licensee intends to supply water to the premises of a customer which were not previously connected to a relevant undertaker's supply system, the Licensee shall, as soon as reasonably practicable, inform any third party sewerage undertaker which provides or will provide services to those premises of—

- (a) the date of connection;
- (b) the address of the premises; and
- (c) the name and address of the Licensee's customer with respect to those premises.

## **PART C – STANDARD CONDITIONS APPLICABLE TO SEWERAGE LICENCES ONLY**

[To be confirmed]

## **[PART D – STANDARD CONDITIONS APPLICABLE TO WATER SUPPLY LICENSEES WITH [A COMBINED LICENCE]**

*{Drafting note – Section 7.1.2 in the main document refers to this}*

### **1. Interpretation of Part D**

In this Part unless the context so requires;

“relevant introduction” means an introduction of water by the Licensee which is permitted under section 66B of the Act (introduction of water into water undertaker's supply system) or 66C of the Act (wholesale water supply by secondary water undertaker) and which is designated as a strategic supply under section 66G of the Act (designation of strategic supply) or introductions of water by the Licensee which are so permitted and which are designated as a collective strategic supply under section 66H of the Act (designation of collective strategic supply)

“qualifying licensed water supplier” has the same meaning as in section 23 of the Act (meaning and effect of special administration order);

### **2. Revocation – combined licences**

(1) Subject to the following provisions of this paragraph, a notice under paragraph 11(1) above shall not be served or take effect while the Licensee is a qualifying licensed water supplier.

(2) Sub-paragraphs (3) and (4) apply where the Secretary of State is satisfied that arrangements have been made to ensure that activities relating to any relevant introduction will be properly carried on after the Licensee's water supply licence is revoked.

(3) Where this sub-paragraph applies and the notice of revocation has not been served, or the date specified in a notice under paragraph 11(1) above has not passed, sub-paragraph (1) shall cease to apply.

(4) Where this sub-paragraph applies and the date specified in a notice under paragraph 11(1) above has passed, the Licensee's water supply licence shall be revoked immediately.

### **3. Prohibition on introduction – combined licences**

(1) The Licensee shall not introduce water from any water source in pursuance of its licence into any relevant [water] undertaker's relevant potable supply system until the Chief Inspector of Drinking Water has served notice on the Licensee stating that [she][he] has conducted a satisfactory audit in relation to compliance with the relevant regulatory standards applicable to the water source and treatment works used by the Licensee in relation to that introduction.

(2) In sub-paragraph (1)—

(a) "relevant potable supply system" means any supply system within the meaning of section 17B(5)(a) of the Act (section 17A: supplementary) that conveys water which is required to be wholesome at the time of supply by section 68 of the Act (duties with respect to water quality); and

(b) the reference to the treatment works used by the Licensee shall be construed consistently with the reference to a water undertaker's treatment works in section 17B(5)(a) of the Act.

### **4. Special Administration – combined licences**

(1) Whether or not the Licensee is currently a qualifying licensed water supplier, the Licensee shall at all times ensure that, if a special administration order were made in relation to it, the Licensee would have available to it sufficient rights and assets to enable the special administrator so to manage the affairs, business and property of the Licensee as to ensure that the purposes of such an order could be achieved.

(2) Where a Licensee is a subsidiary of another company and its ultimate parent company is not a relevant undertaker, the Licensee shall, within 30 days of its Licence coming into

force, procure from its ultimate parent company legally enforceable undertakings in favour of the Licensee in a form determined by the Authority and expressed to remain in force for as long as the Licensee is a combined licensee.

(3) The undertakings referred to in sub-paragraph (2) shall provide that the ultimate parent company shall not, and shall procure that its subsidiaries shall not, cause or contribute to a contravention of this paragraph by the Licensee.

(4) In this paragraph—

“subsidiary” has the same meaning as in section 1159 of the Companies Act 2006 (Meaning of “subsidiary” etc)

“ultimate parent company” shall be construed in accordance with paragraph 9 of Schedule 4 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410); and

“business”, “property” and “special administration order” have the same meanings as in section 23 of the Act (meaning and effect of special administration order).]

*[FURTHER PARTS UNDER CONSIDERATION IN RELATION TO SPECIAL LICENCES.]*

*{Drafting note – Section 7.2 in the main document sets out our thinking about the content of a self-supply licence}*

## **A4 Draft MAC enablement condition**

### **“MAC CONDITION”**

#### **NEW CONDITION FOR INSTRUMENTS OF APPOINTMENT AND STANDARD CONDITIONS OF WATER SUPPLY LICENCES AND SEWERAGE LICENCES**

##### **CONDITION [Y]: MARKET ARRANGEMENTS CODE**

#### **1.1 Obligations in relation to Market Arrangements Code**

The [Appointee][Licensee] must:

1.1.1 be a party to and comply with the Market Arrangements Code; and

1.1.2 take all steps within its power to ensure that the Market Arrangements Code designated by [ ] on [ ] remains a document that:

- (a) is designed to facilitate principles set out in paragraph [1.2](the “MAC Principles”);
- (b) conforms to the requirements of paragraphs [1.3 ] of this condition in relation to the modification of the Market Arrangements Code; and;
- (c) makes express provision for the matters described in paragraphs [1.4 ] of this Condition.

## **1.2 Applicable MAC Principles**

1.2.1 The MAC Principles are [as set out in Schedule 1 of the Market Arrangements Code]:

### **[(a) Efficiency**

- (i) To ensure the efficient discharge by each Retailer of its Licence obligations and by each Wholesaler of its obligations under its Appointment and their respective statutory duties to the extent impacted by the Market Arrangements Code;
- (ii) To promote the efficient, economic and coordinated operation of the water and wastewater sector to the extent impacted by the Market Arrangements Code; and
- (iii) To promote the efficient delivery of the role of the Market Operator.

### **(b) Proportionality**

The Market Arrangements Code should be proportionate to the size of the Competitive Market;

### **(c) Transparency**

The Market Arrangements Code should be concise, clearly expressed, well-structured and readily accessible to both existing and prospective Retailers;

### **(d) Barriers to Entry**

The Market Arrangements Code should not create barriers to entry in respect of the Competitive Market and should promote effective competition in the Competitive Market.

### **(e) Non-Discrimination**

The Market Arrangements Code should not unduly discriminate, or create undue discrimination, between and among Retailers.

**(f) Customer participation**

The Market Arrangements Code and arrangements established by or under the Wholesale Contract should promote customer participation.

**(g) Seamless markets**

The Market Arrangements Code should be developed in a manner that delivers a seamless customer experience in the Areas of Wholesalers and in Scotland.

**(h) No limit on upstream competition**

The Market Arrangements Code or arrangements established by or under the Wholesale Contract should not place any constraint or limit on the introduction and development of competition in the upstream water and sewerage market.]

**1.3 Modification of the Market Arrangements Code**

1.3.1 The Market Arrangements Code shall contain procedures for its own modification (including procedures for the modification of the modification procedures themselves) which shall ensure that:

- (a) proposals for the modification of the Market Arrangements Code may be made by any member of the Panel constituted in [section 5] of the Market Arrangements Code, by the Authority and by such other persons or bodies as may be [set out in section 7 of the Market Arrangements Code] [designated by the Authority];
- (b) every proposed modification is brought to the attention of all parties mentioned in or pursuant to paragraph (a) above;
- (c) any and all representations made in respect of a proposed modification are able to be properly considered by the relevant decision makers;
- (d) the question of whether any proposed modification better facilitates the achievement of the MAC Principles is able to be properly evaluated by the parties to the Market Arrangements Code;
- (e) modifications require Authority approval;

- (f) modification proposals made by any of the parties stated in paragraph (a) which the Authority reasonably considers are necessary to comply with or implement any Applicable Law are
  - (i) to be accepted into the Market Arrangements Code modification procedures by the Panel;
  - (ii) where they are raised by a person other than the Authority, not to be withdrawn without the Authority's prior consent; and
  - (iii) to proceed in accordance with any timetable(s) directed by the Authority in relation to the raising of a modification proposal, the completion of relevant procedural steps and the implementation of the modification proposal.
- (g) a modification report is prepared including:
  - (i) a proposed implementation date either:
    - A. in accordance with any direction(s) issued by the Authority under paragraph 1.3.1(g)(iii); or
    - B. where no direction has been issued by the Authority under paragraph 1.3.1(g)(iii), that would enable any proposed modification to take effect, as soon as reasonably practicable after the decision to implement it has been reached, taking into account the complexity, importance, and urgency of that modification and the most efficient timing for implementing the modification; and
  - (ii) a summary of and copies of all submissions made in respect of the proposed modification; and
  - (iii) an assessment of the extent to which the proposed modification would better facilitate achieving the MAC Principles and a detailed explanation of the reasons for that assessment;
- (h) the proposed implementation date may be altered with the consent of or as directed by the Authority;
- (i) parties to the Market Arrangements Code are able to consider and comment upon the modification report prepared in accordance with paragraph (g) and in particular whether the modification would, as

compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles;

- (i) the Panel, having regard to whether the modification would, as compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles, makes a recommendation to the Authority to approve or reject the proposed modification.
  - (j) completion of each of the procedural steps outlined in this paragraph 1.3.1 to the extent that they are relevant, is in accordance with any timetable(s) directed by the Authority;
  - (k) the modification report prepared in accordance with paragraph (g) (and submitted to the Authority pursuant to the procedures described in this paragraph 1.3.1) can be revised and resubmitted upon, and in accordance with, a direction issued to the Panel by the Authority where the Authority determines that it cannot properly form an opinion on the approval of the modification proposal.
- 1.3.2 Any proposals to modify the Market Arrangements Code must be designed to better facilitate the achievement of the MAC Principles.
- 1.3.3 No modification of the Market Arrangements Code may be made unless the Authority, having had regard to the MAC Principles, directs the [Licensee][Appointee], in conjunction with every other Licensee and Appointee, to modify the Market Arrangements Code in such manner as is stated in that direction.

## 1.4 Contents of the Market Arrangements Code

**The Market Arrangements Code shall make express provision in relation to the following matters:**

- 1.4.1 the creation of an agreement, to which the [Licensee][Appointee], every other Licensee, every other Appointee shall be a party, and which binds the [Licensee][Appointee] to comply with the terms of the Market Arrangements Code (the “[MAC Framework Agreement](#)”);
- 1.4.2 the referral for determination by [the Authority ]of any dispute arising as to whether a person seeking to be admitted as a party to the MAC Framework Agreement has fulfilled such accession conditions as are set out in the MAC [Framework][Accession] Agreement;



- 1.4.3 terms that provide for the [Licensee][Appointee] and such other parties to the MAC Framework Agreement to be contractually bound by some or all of the provisions of the Market Arrangements Code;
- 1.4.4 arrangements for establishing and maintaining a panel (“**the Panel**”) which is to be responsible, by way of such proceedings as may be set out in the Market Arrangements Code, for the governance and administration of the Market Arrangements Code and whose members are to be required as a condition of their appointment or election to act independently and not as delegates; and
- 1.4.5 arrangements for the establishment and funding at all times of [a][the] body to perform the role of Market Operator fulfilling the functions set out in the Market Arrangements Code, a process by which the Panel can make recommendations to the Authority in relation to modifications of any code issued pursuant to section 66DA of the Act and/or section 117F of the Act.

## 1.5 Interpretation

*[To be inserted following consultation]*

## **Appendix B: Changes to the Appointment conditions**

### **B1 Structure of this appendix**

Section 5 of the main document set out our proposals for amendments to the instrument of appointment. In section 5.1 we set out our thinking on amendments to conditions to reflect changes arising from the role of retailers in regards to interactions with customers, clarifying whether conditions focus on household or non-household customers, together with issues related to the equivalence of treatment across retailers. Section 5.2 then discussed our proposed response to the recommendation from the Open Water Programme that there should be a new condition covering the conduct of integrated undertakers. This new condition would be in respect of how integrated undertakers are bound by the provisions of the codes and contracts in the same way as for other retailers.

Section B2 provides a more detailed summary of the proposed changes. Finally, Section B3 provides the draft text for the proposed new condition covering the conduct of integrated undertakers.

As we explained in the main document, our approach has been to illustrate our proposals with regard to the Appointment for a single water and sewerage company. Subsequent work will be needed to fully account for the differences between instruments for different companies.

### **B2 Structure of proposed amendments to Appointment conditions**

Table B1 below summarises the routine amendments proposed to each of the existing Appointment conditions. Table 3 in section 5.1 of the main document provided a summary of the proposed changes. Table B1 covers each condition individually, identifies those where changes are not proposed and gives some additional detail on the proposed changes.

**Table B1 Proposed amendments to existing Appointment conditions**

<b>Condition</b>	<b>Purpose</b>	<b>Considerations</b>	<b>Nature of change</b>
<b>A: Interpretation and construction</b>	Explains the terms and expressions used in the licence	Licence condition will need updating to reflect the relevant acts, codes and terms that will be applicable following market opening.	Wording to be reviewed
<b>B: Charges</b>	Sets out the basis of requirements for the appointee to comply with the price controls	There is no immediate change that is required for this licence condition..	n/a
<b>C: Infrastructure charges</b>	Limits the amount and rate of increase in company charges for the first-time provision of a water supply or sewerage service for domestic purposes	There is no immediate change that is required for this licence condition.	n/a
<b>D: Charges schemes</b>	Requires companies to fix and publicise their charges for water and sewerage services and infrastructure charges	There is no immediate change that is required for this licence condition.	n/a
<b>E: Discrimination</b>	Prohibits undue preference to, or undue discrimination against any class of customer or potential customer for standard charges	There is no need to change this licence condition.	n/a

Condition	Purpose	Considerations	Nature of change
<b>F: Accounts and accounting information</b>	Sets out details of the accounts and financial information which companies are required to produce. This information enables Ofwat to compare companies' financial positions and performance	We consider that changes will be required in this condition for: <ul style="list-style-type: none"> <li>• Arm's length trading to cover transactions between wholesale and retail, including those following an exit from non-household retail.</li> <li>• Certificate of compliance to be equivalent as Certificate of Adequacy in WSSL.</li> </ul>	Consultation questions refers to possible wording changes
<b>FI: Procurement of Services</b>	Ensures that the Appointee achieves effective and fair competitive tendering of services procured	There is no need to change this licence condition.	n/a
<b>G: Code of practice for customers and relations with CCWater</b>	Sets out the requirements on companies to publish a code of practice for customers describing: services provided and charges; billing arrangements and complaint handling; matters relating to water meters; and what to do in emergencies	Needed to highlight where the obligations lie for non-household customers for emergencies and potentially CCWater	Consultation questions
<b>H: Code of practice and procedure on debt and disconnection</b>	Gives guidance to customers who have difficulty paying bills	There is no need to change this licence condition.	n/a

Condition	Purpose	Considerations	Nature of change
<b>I: Code of practice and procedure on leakage</b>	Deals with charges for metered domestic customers when there is an unidentified leak in a part of the pipe that is the customer's responsibility	The condition remains relevant for the appointee in respect of its household customers.  Paragraph 8 (around detecting and making good leaks) refers to 'customers' rather than 'domestic customers', and therefore includes processes and obligations on the appointee that may require updating.	Consultation question asking for stakeholders' views to take this forward
<b>J: Levels of service information and service targets</b>	Requires companies to provide Ofwat with an annual report setting out their performance against defined service standards	There is no need to change this licence condition.	n/a
<b>K: Ring fencing, disposal and change of use of protected land</b>	Companies are required to ensure that they have access to sufficient assets to be able to perform their duties and operate as an independent company	There is no need to change this licence condition.	n/a
<b>L: Underground asset management plans</b>	Allows Ofwat to check that each company is maintaining and developing the underground assets (water and sewer pipes) necessary to fulfil its legal obligations	There is no need to change this licence condition.	n/a

Condition	Purpose	Considerations	Nature of change
<b>M: Provision of information to WSRA</b>	Requires companies to provide Ofwat with information it reasonably requires, to carry out its duties	There is no need to change this licence condition.	n/a
<b>N: Fees</b>	Gives Ofwat power to levy Licence Fees from the companies sufficient to cover the costs of running Ofwat. Fees include the costs involved in undertaking periodic reviews and the costs of Competition Commission references	There is no need to change this licence condition.	Consultation question asking for views on fees
<b>O: Circumstances in which a replacement appointment may be made</b>	Licences were granted from 1 September 1989. A company may only be replaced following twenty-five years' notice from the Secretary of State.	There is no need to change this licence condition.	n/a

Condition	Purpose	Considerations	Nature of change
<p><b>P: The role of the appointee’s ultimate controller</b></p>	<p>Applies to companies that are part of a multi-utility organization or are part of a large group. Ensures that the regulated water company is run independently of the rest of the group.</p>	<p>There is no need to change this licence condition.</p>	<p>n/a</p>
<p><b>Q: Interruptions in supply because of drought</b></p>	<p>Commits companies to pay compensation to customers whose water supply is interrupted under drought orders.</p>	<p>This condition can be amended as the process of payments to business customers is being catered for through section 2.4.3 of the Business Terms in the Wholesale Retail Code.</p>	<p>Consultation question</p>
<p><b>R: Provision of combined and wholesale water supplies</b></p>	<p>Covers access codes, anti-competitive behaviour, and provision of information.</p>	<p>This condition will need changing. There are two parts:</p> <p><b>Access code – amend</b></p> <p>New WSL licensees will no longer be subject to the access code and appointee’s prices which wholesalers charge will be subject to Wholesale Tariff Document upon which Wholesale Contracts are based.</p> <p>Combined Supply Licences will remain subject to the access code guidance as published by Ofwat. This guidance will need to be updated.</p> <p><b>Obligations about information – Amend</b></p> <p>This will be applicable for combined supply only, and should be drafted as such.</p>	<p>Consultation questions</p>

Condition	Purpose	Considerations	Nature of change
<b>S: Customer transfer protocol</b>	Provides a standardised process for the timely and transfer of supplies to premises of customers	<p>Customer transfer should be replaced by provision of industry code.</p> <p>This will potentially be removed, however Ofwat is still considering the form of the transition scheme for combined supply licences.</p>	Consultation question



## B3 Proposed new condition on conduct of integrated undertaker

### “STAPLING LICENCE CONDITION”

#### NEW CONDITION FOR LETTERS OF APPOINTMENT OF INTEGRATED UNDERTAKERS

#### CONDITION [X]: APPLICATION OF WHOLESALE RETAIL CODE

##### 1.6 Introduction

The purpose of this Condition is to ensure that, where the Appointee chooses not to exercise its right to exit pursuant to the [Retail Exit Regulations], it will participate in the market arrangements implemented pursuant to Part 1 of the Water Act 2014, in particular any codes issued pursuant to s66DA and/or s117F of the Act.

##### 1.7 Interpretation

In this Condition:

- “Eligibility Guidance”** means:
- (i) any guidance issued by the Authority under paragraph 10(1) of Schedule 2A or paragraph 4 of Schedule 2B of the Act in relation to the factors that are, or are not, to be taken into account in determining the extent of any particular premises; and/or
  - (ii) any regulations made by the Secretary of State under section 17C(3) of the Act as to the circumstances or factors which relate to the use of any premises,
- together with any further guidance as to the identification or designation of a customer and/or premises which the Secretary of State or the Authority may issue from time to time.
- “Eligible Premises”** means premises other than Household Premises and which may be identified as eligible premises in light of any Eligibility Guidance
- “Retail Activities”** shall have the meaning given in Condition B of this

Instrument of Appointment

- “Retail Business”** means the part of the Appointed Business which carries out Retail Activities
- “unrelated legal entities”** means enterprises which are not under common ownership or common control (within the meaning those expressions have in section 26(1) of the Enterprise Act 2002)
- “Wholesale Activities”** shall have the meaning given in Condition B of this Instrument of Appointment
- “Wholesale Business”** means the part of the Appointed Business which carries out Wholesale Activities

**1.8 Arrangements between Appointee’s Wholesale Business and Retail Business**

If the Appointee carries out Retail Activities in relation to Eligible Premises in its Area of Appointment, the Appointee shall:

- 1.8.1 carry out any such activities between its Wholesale Business and its Retail Business as if :
- (a) the Appointee had entered into an agreement with the holder of a water supply licence and/or a sewerage licence pursuant to s66D and/or s117E of the Act (regardless of whether any such agreement exists or not), and
  - (b) the Appointee’s Wholesale Business and its Retail Business were, in fact, held in separate and unrelated legal entities and the Retail Business held a water supply licence and/or sewerage licence;
- 1.8.2 put in place written arrangements in relation to any such activities between its Wholesale Business and its Retail Business which are consistent with the terms of paragraph [1.3.1] of this Condition;
- 1.8.3 provide the Authority with evidence of the written arrangements put in place pursuant to paragraph [1.3.2] of this Condition; and

- 1.8.4 apply to the written arrangements put in place pursuant to paragraph [1.8.1] of this Condition any code or codes issued by the Authority from time to time pursuant to s66DA and/or s117F of the Act, provided that:
- (a) said code or codes shall be read and construed in accordance with Schedule 8 to the Market Arrangements Code, and
  - (b) Schedule 8 to the Market Arrangements Code shall be treated by the Appointee as a derogation from complying in full with the particular terms of said code or codes only to the extent set out in the said Schedule 8.

## Appendix C: Glossary<sup>1</sup>

Term	Explanation
<b>Acquiring licensee</b>	A licensee that has acquired transferred customers after an undertaker has exited the retail market.
<b>Associate licensee</b>	A separate legal entity that has been established by an undertaker so that it can participate in the retail market. This term is used to distinguish these licensees from the licensees set up by new businesses entering the market and from the in-area non-household retail arms of undertakers.
<b>Charges Scheme</b>	Schemes of charges set by companies as per section 143 of the Water Industry Act. The schemes set out the charges as well as the relevant terms and conditions. Undertakers are also required to set out wholesale charges schemes (see below).
<b>Charging Guidance</b>	The mechanism under the WIA91 by which the Government will inform the content of Ofwat’s charging rules. The Government will publish statutory guidance in 2015 that will set out its approach to regulating charges. Ofwat must have regard to the charging guidance when setting the relevant charging rules.
<b>Charging Rules</b>	One of the mechanisms by which Ofwat governs the charges that undertakers may impose on various parties. Ofwat must issue charging rules to cover undertakers’ charges to their customers for water or sewerage services (through charges schemes) as well as charges to licensees for use of the water or sewerage networks.
<b>Code Panel</b>	The group established under the Market Arrangements Code responsible for the governance and administration of the Market Arrangements Code.
<b>Codes</b>	The mechanism by which the various agreements that undertakers make with other parties will be regulated. The contents and legal basis will vary from code to code but, generally, they may contain standard terms and conditions, principles for agreeing terms, or principles for how negotiations shall be run.

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<sup>1</sup> This glossary is intended to assist stakeholders’ understanding of the consultation document rather than to provide legal definitions.

Term	Explanation
<b>Customer</b>	End consumer of the water and sewerage services. In relation to this consultation we are referring to eligible NHH customers only.
<b>Deemed contract</b>	A contract that is deemed to apply between eligible non-household customer and the licensee that serves them where the customer has not negotiated a separate contract with that licensee. The term is used in this consultation document to refer to schemes of terms and conditions which are to apply in certain circumstances specified in the WIA91 and to other wider areas where such terms may be desirable and provided for under other regulatory instruments.
<b>Default Tariff</b>	A tariff that will be offered to customers from April 2015 that complies with the 2014 price control. This provides price protection for customers.
<b>Eligible NHH Customer</b>	<p>As regards the supply of water, eligible NHH customers are:</p> <ul style="list-style-type: none"> <li>• non-household customers whose premises are supplied with water using the supply system of a water undertaker whose area of appointment is wholly or mainly in England (At present this would be all non-household customers in England and Wales EXCEPT those supplied using the supply systems of Dŵr Cymru and Dee Valley Water).</li> <li>• non-household customers whose premises are supplied with water using the supply system of a water undertaker whose area of appointment is wholly or mainly in Wales AND to which the total quantity of water estimated to be supplied annually is not less than 50 megalitres (At present this means that non-household customers supplied using the supply systems of Dŵr Cymru and Dee Valley Water also have to meet the 50 megalitre threshold to be eligible).</li> </ul> <p>As regards the supply of sewerage services, eligible NHH customers are non-household customers whose premises are supplied with sewerage services using the sewerage systems of sewerage undertakers whose area of appointment is wholly or mainly in England. (At present this would be all non-household customers in England and Wales EXCEPT those who are supplied using the sewerage system of Dŵr Cymru).</p>
<b>Exit regulations</b>	Any regulations made by the Government under the powers in Chapter 4 of Part 1 of the WA14.
<b>Exited areas</b>	The area of appointment of an undertaker that has exited the non-household retail market.

<b>Term</b>	<b>Explanation</b>
<b>Exited/exiting undertaker</b>	An undertaker that has voluntarily exited or will be voluntarily exiting the non-household retail market.
<b>Gap sites</b>	Supply points for eligible premises through which water or sewerage services are supplied and which are identified as missing or insufficient on the central registration system and/or not allocated to a retailer.
<b>Guaranteed Service Standards (GSS)</b>	The minimum level of service that by statute must be provided by licensees to all customers.
<b>In-area customers</b>	Eligible non-household customers with premises in the undertaker's area of appointment.
<b>Incidence effects</b>	The direct or indirect consequences of making any change to the status quo, particularly important regarding structural changes in tariffs that impact different customers in different ways and may cause significant changes to their bill values.
<b>Incumbent undertaker</b>	The water and/or sewerage undertaker appointed by way of an Instrument of Appointment to provide services in its area of appointment including in relation to services to customers and the operation and maintenance of its system
<b>Instrument of Appointment (Appointment)</b>	Appointed water companies operate under instruments of appointment, also referred to as 'appointments'. The instruments of appointment impose conditions on the companies.
<b>Interim Supply Code (ISC)</b>	This code, required under the WIA91, seeks to ensure that the customers of licensees that cease to supply can be transferred to a new retailer without those customers experiencing any disruption in their retail service.
<b>Level Playing Field (LPF)</b>	A level playing field gives all companies an equal opportunity to provide services to customers.
<b>Licensee</b>	The holder of a water supply licence or sewerage licence.
<b>Market Architecture Plan (MAP)</b>	This includes versions of key documents that will govern the competitive retail market for eligible non-household water and sewerage customers.
<b>Market Arrangements Code (MAC)</b>	The MAC is a code, established pursuant to a licence condition, which relates to multilateral arrangements between market participants who are required to comply so that the market functions effectively and continues to meet the needs of customers.

Term	Explanation
<b>Market Operator Services Limited (MOSL)</b>	A private sector organisation, limited by guarantee and owned by all market participants, that provides services that help enable and facilitate the effective operation of the competitive market arrangements.
<b>Mogden formula</b>	The formula is used by undertakers to calculate charges made to collect, treat and dispose of trade effluent. The charge depends on the volume and strength of the discharged effluent.
<b>New Appointee</b>	A company that provides water and sewerage services or water only services for a specific area in place of the former undertaker under the New Appointment and Variation (NAV) regime.
<b>New Entrant</b>	A new business entering the water market, i.e. a licensee or inset appointee or an applicant to be a licensee/inset appointee. The term may also include self-lay operators in a wider context.
<b>New Retailer</b>	The retailer to which the customer wishes to switch.
<b>Non-Potable Water</b>	Water that has not been treated to the standard required under legislation for it to enter the public distribution network. It is often used in industrial processes.
<b>Premises</b>	Land and buildings together considered as a property.
<b>Retail</b>	Customer-facing services, for example billing, meter reading and call centre services. The full list of retail services is outlined in our PR14 methodology “Setting price controls for 2015-20 – final methodology and expectations for companies’ business plans”.
<b>Retail Authorisation</b>	<p>The term “Retail Authorisation” is used in this document to refer to both Retail Authorisations and Restricted Retail Authorisations.</p> <p>Under the amended WIA91, a Retail Authorisation is a type of authorisation under a WSSL which will enable a licensee to provide retail services to eligible NHH customers which are supplied using the supply system of an undertaker whose area of appointment is wholly or mainly in England, including to its own premises (self-supply).</p> <p>A Restricted Retail Authorisation is a type of authorisation under a WSSL which will enable a licensee to provide retail services to eligible NHH customers which are supplied using the supply system of an undertaker whose area of appointment is wholly or mainly in Wales.</p>

<b>Term</b>	<b>Explanation</b>
<b>Retail Exit</b>	Where an undertaker exits the Retail Market with the consent of the Secretary of State. Undertakers choosing to exit the non-household retail market will be able to transfer their eligible non-household customers to a licensee and certain legal duties relating to the provision of retail services to such customers will be modified or removed.
<b>Retail Licensee</b>	New entrant with a Retail Authorisation, including Associate Licensees.
<b>Retail Market</b>	Post 2017 market allowing eligible non-household customers' choice over the provision of water/sewerage services. This encompasses the systems, processes and governance required to deliver such a market.
<b>Retail Tariff</b>	A tariff offered by retailers to customers.
<b>Retailer</b>	A provider of water and/or sewerage services. This could be an entity that is licensed to provide retail services to the end customer in the Retail Market or the retail arm of an undertaker that has not exited the Retail Market.
<b>Self-Lay Organisation (SLO)</b>	A developer installing (or using a contractor to install) the pipework for a new water main or sewer which will be subsequently adopted by the relevant undertaker.
<b>Self-Supply Licensee</b>	A customer with a WSSL that provides retail services to its own premises and/or those of its associates (for example, subsidiaries or partners).
<b>Settlement</b>	The calculation of charges between market participants to remunerate them for the goods and/or services they have provided.
<b>Settlement Process</b>	The Settlement of the wholesale charges between the wholesaler and retailer, including any reconciliation process.
<b>Special Agreement</b>	An agreement in the market between an undertaker and a customer for the supply of water or sewerage services which are not covered by a charges scheme.
<b>Supplier of First Resort</b>	A licensee who is allocated any eligible non-household customer in an exited area where that customer has not chosen an alternative licensee themselves, for example at Gap Sites.
<b>Supplier of Last Resort</b>	A licensee or undertaker who is allocated eligible non-household customer(s) of a licensee that has ceased to supply, for example through an insolvency event, where those customers have not chosen an alternative licensee themselves.



<b>Term</b>	<b>Explanation</b>
<b>Supply Point</b>	The points of supply of service to the Customer. This may be for water supply, sewerage services, trade effluent and other wholesale services.
<b>Switch</b>	Where an eligible non-household customer chooses to switch from either their undertaker or an acquiring licensee to another licensee for the provision of certain retail services. From April 2017 eligible non-household customers will be able to switch their retail service provider.
<b>Trade Effluent</b>	Untreated, non-domestic sewage from commercial premises.
<b>Transfer</b>	Where an undertaker that has chosen to exit the market transfers their non-household customers to an acquiring licensee.
<b>Undertaker</b>	A company who has statutory powers and duties to supply water and/or sewerage services to premises within an appointed geographical area under section 6 of the WIA91. These are the incumbent water companies and inset appointees.
<b>Upstream</b>	The elements of the water and sewerage value chain that do not directly involve the customer, i.e. those activities related to the abstraction or collection of water and sewerage, treatment and distribution.
<b>Upstream Market</b>	A future market allowing competition in upstream activities, such as providing water resources into the water network or removal of products from the sewerage network.
<b>Water Act 2014 (WA14)</b>	A piece of primary legislation that amends the WIA91 to expand retail competition. It contains a broad enabling power to make regulations that will allow undertakers to apply to exit the non-household retail market.
<b>Water Industry Act 1991 (WIA91)</b>	The main piece of primary legislation that concerns the regulation of the water industry, including water and sewerage services.
<b>Water Supply and Sewerage Services Licences (WSSL)</b>	This licence will allow entry into the Retail Market. Under the WSSL framework, companies will be able to continue to apply for entry into the competitive water supply market for the purpose of providing upstream services through a combined supply licence. This will be further revised when the relevant upstream reforms in the WA14 are brought into force.

Term	Explanation
<b>Water Supply Licence (WSL)</b>	<p>The existing licence whereby licensees can provide a limited class of Customers with water supply services. There are currently two types of Water Supply licence:</p> <ul style="list-style-type: none"> <li>• Retail supply licence: This allows the Licensee to purchase a wholesale supply from an appointed water company's supply system and supply the premises of its customers.</li> <li>• Combined supply licence: Enables the Licensee to introduce water into a supply system and supply the premises of its customers.</li> </ul> <p>These licences will require to evolve into the new WSSL framework when the Retail Market opens.</p>
<b>Wholesale</b>	<p>The inputting of water to or the removal of sewage from the network either by an incumbent water company, a neighbouring incumbent or by a licensee with a wholesale or disposal authorisation.</p>
<b>Wholesale Charges Scheme</b>	<p>The publication of wholesale charges by undertakers required under s143 of the WIA91.</p>
<b>Wholesale Retail Code (WRC)</b>	<p>This statutory code sets out the processes that will govern the retail market for the supply of water and sewerage services to eligible non-household customers.</p>
<b>Wholesale Tariff</b>	<p>The published standard tariff offered by Wholesalers to Retailers.</p>
<b>Wholesaler</b>	<p>The undertaker who provides the service to the Supply Point and undertakes wholesale activities. This includes the supply of water and waste water services, meter ownership, installation, maintenance and replacement, trade effluent compliance and monitoring, disconnections and reconnections.</p>

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a leading economic regulator, trusted and respected, challenging ourselves and others to build trust and confidence in water.



Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA

Phone: 0121 644 7500  
Fax: 0121 644 7533  
Website: [www.ofwat.gov.uk](http://www.ofwat.gov.uk)  
Email: [mailbox@ofwat.gsi.gov.uk](mailto:mailbox@ofwat.gsi.gov.uk)

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