

December 2015

Trust in water

Consultation on licensing: results and decisions - appendices

www.ofwat.gov.uk

ofwat

Contents

A1	Summary of responses by question	2
A2	Draft WSSL	18
A3	Tracked-changes version of the draft WSSL, highlighting areas of change since the consultation	35

A1 Summary of responses by question

Consultation questions	Response Summary	Section reference
<p>Q1 Do you agree with the proposal to have separate licences covering water and sewerage retail? If not, please explain how you envisage that a single licence for water and sewerage would differ?</p>	<p>There is broad agreement across the industry to have separate licences covering water and sewerage.</p> <p>There were queries around whether there need to be differences between the requirements for water and sewerage retail in terms of:</p> <ul style="list-style-type: none"> • Standard conditions in the licence; and • The technical expertise required. <p>Several companies commented that, should the difference not be overly burdensome, it would make sense to have a modular approach accommodated within a single licence application. It was also highlighted that separate licences are required, given there will be no retail competition for sewerage in Wales.</p>	<p>The form of the WSSL - Section 4.1</p>
<p>Q2 Do you agree with the proposed amendments to standard conditions for the new water supply and sewerage service licence (WSSL)?</p>	<p>Generally, companies were supportive of the proposed drafting of the new WSSL.</p> <p>There were, however, a number of suggestions on certain conditions:</p> <p>Condition 4 Certificate of Adequacy (CoA)</p> <p>Companies had suggestions around the need for CoA guidance but no specific suggestions around the licence drafting.</p> <p>Condition 5 Emergencies and unplanned events</p> <p>There were two suggested drafting changes:</p> <ul style="list-style-type: none"> • Change "relevant water undertakers" to "relevant undertaker". • Include "unplanned events" in section 1(b) <p>Condition 7 Further obligations to undertakers</p> <ul style="list-style-type: none"> • A number companies questioned the relevance of the condition. • Some companies sought drafting clarity around the use of "relevant undertaker". • One company commented that this supported shared services between undertaker and its associated retailer. <p>Condition 10 Licence Fee</p> <p>The basis for this calculation should be in-line with the proposals for MO cost allocation (based on turnover and customer numbers)</p>	<p>Standard conditions of the WSSL – Section 4.1</p> <p>We have removed condition 7 from the Standard Licence Conditions</p>
<p>Q3 Do you think any of the proposed amendments listed in Table 2 are non-routine and require</p>	<p>Most respondents agreed with basing the new WSSL standard conditions on the existing WSL conditions and considered the proposed changes set out in table 2 to be routine in nature: only a few respondents believed that these needed to be discussed further. Some companies sought further clarification around:</p>	<p>Standard conditions of the WSSL – Section 4.1</p>

Consultation questions	Response Summary	Section reference
<p>additional discussion? If so, why?</p>	<p>Certificate of Adequacy – companies thought it would be beneficial to understand how it would work in different scenarios, and in light of retail exit.</p> <p>Arm’s length transactions – some respondents felt that this was non-routine and that they need more information to understand the implications. Respondents also thought that this policy should consider the implications of Defra’s exit regulations.</p> <p>Additionally, some respondents expressed concern regarding the timing of the removal of the in-area trading ban. In particular, they felt that this would disadvantage new entrants as associate retailers would be able sign up the most profitable customers on long-term contracts ahead of market opening.</p>	<p>Additionally, in-area trading ban and arm’s length transaction covered in Section 3.1.</p>
<p>Q4 Do you agree with the proposed approach to maintaining customer protection in the future WSSL?</p>	<p>In general, there was support for the intended use of the Certificate of Adequacy (CoA) though there was a desire to have greater clarity on how it will be implemented. In particular, there were a number of comments on:</p> <ul style="list-style-type: none"> • The need for the CoA to be confidential (i.e. it could reveal price sensitive information) • Defining the level of materiality • Process of producing CoA, including assurance, timing and penalties for failure • Duration of process (enduring or phased out). <p>A minority of respondents disagreed with the need for CoA.</p> <p>A number of respondents also raised the importance of the assessment of retailers in the application process, including:</p> <ul style="list-style-type: none"> • Customer service capability • Financial resources • Further information Ofwat may require to monitor performance <p>Some respondents called for the development of a code of practice for the industry.</p> <p>One respondent felt the approach for customer protection is inadequate compared with the Scottish approach and instead proposed including two conditions from the Scottish licences about default packages and customer cancellation.</p>	<p>Maintaining customer protection – Section 4.1.</p> <p>Additionally, changes to the licence not consulted in our June consultation - Section 4.2</p>
<p>Q5 Do you agree with the proposed approach to Market Arrangements Code enablement?</p>	<p>Several of the respondents had specific comments regarding the content of the MAC enablement condition. These included:</p> <ul style="list-style-type: none"> • Concerns about repeating elements of the MAC in the condition could mean that MAC modifications would also require a licence change, which would be unwelcome. 	<p>Enabling the Market Arrangements Code – Section 4.1</p>

Consultation questions	Response Summary	Section reference
	<ul style="list-style-type: none"> • Comments on principles, including the desire for proportionality for small companies and to include a focus on customer benefits. • Comments that the arrangements may need modification for Wales to avoid burden on Welsh companies given the size of competitive market there. • Comments on clarity regarding the owner of the MAC. • That the condition should not include an obligation to comply with the MAC – breach of code should be dealt with under the MAC. <p>One respondent commented that it would be beneficial to separately have the retail and wholesale units of integrated companies bound by the MAC.</p>	
<p>Q6 Do you have any specific comments on the legal drafting?</p>	<p>Several respondents had specific comments on the drafting of the MAC enablement condition, with a number of issues identified with the current drafting.</p>	<p>Enabling the Market Arrangements Code – Section 4.1</p>
<p>Q7 Do you agree with the proposed approach to include requirements on arm’s length transactions and non-discrimination?</p>	<p>Respondents were largely in support though there were a number of comments raised. These queried:</p> <ul style="list-style-type: none"> • The rationale for having arm’s length requirements / non-discrimination clause in both the wholesaler and retailer licence, as oppose to for wholesalers only. • Whether the arm’s length requirements between incumbent retailers and associated retailers will duplicate costs if they intend to exit when the market opens. • Whether competition law provides adequate protection and that this isn't required • How necessary the non-discrimination clause for licensees is? The company would like further clarity on what this is intended to cover. • Should be reviewed after a defined period (18 months) to check the benefit outweighs any burden. <p>Respondent also raised concerns over the in-area trading ban (as per Q3).</p>	<p>Equivalence of treatment for retailers – Section 4.1. Additionally, in-area trading ban and arm’s length transaction covered in Section 3.1.</p>
<p>Q8 Do you have any other comments on our proposed conditions in this area?</p>	<p>Respondents had varying comments on our approach to ensuring equivalence amongst retailers. This included concerns regarding:</p> <ul style="list-style-type: none"> • The in-area trading ban, respondents were largely supportive although there were differing views on the timing (as per Q3). • The extent to which there will be a level playing field, suggesting the use of additional measures including a governance code and special conditions. • Specific legal drafting comments. 	<p>Equivalence of treatment for retailers – Section 4.1. Additionally, in-area trading ban and arm’s length transaction covered in Section 3.1.</p>

Consultation questions	Response Summary	Section reference
	<ul style="list-style-type: none"> Measures to encourage investment in the sector. 	
<p>Q9 Do you have any other observations about our proposals on changes to the standard conditions for the new Water Supply Licence?</p>	<p>Generally, there were few additional observations on changes to the standard conditions. There were several points made regarding:</p> <ul style="list-style-type: none"> Drafting of conditions Desire to see more including: <ul style="list-style-type: none"> standard condition of sewerage licence only market readiness condition The relationship between the enactment of licences and readiness of incumbent retail businesses A number of issues specific for small companies 	<p>New WSSL – Section 4.1</p>
<p>Q10 Are there any areas not covered in the proposals in which you consider changes are required?</p>	<p>Generally, there were few additional observations on overall proposals. The key points made were regarding:</p> <ul style="list-style-type: none"> Whether conditions on revoking licenses should be different for incumbent retailers Requirement for a comparison of the draft WSSL to its Scottish equivalent to judge what should be matched, and what the impact might be of non-alignment between the two Additional conditions - licensee must comply with the undertaker's instructions in the situation of leaks on premises, defective fittings or non-compliance with water fittings regulations Code of practice' to avoid things such as mis-selling, should be understood in advance of the shadow market Sewerage licence needs consideration Alignment on Wales in WSSL. 	<p>New WSSL – Section 4.1</p>
<p>Q11 Do you agree with our proposals for the conditions within Table 5? Please respond separately on each of the three Appointment conditions (Q, G and I) discussed.</p>	<p>There was broad support for the proposed amendments to conditions G, Q and I.</p> <p>Condition G and Q: Responses largely agreed with the proposed amendments though several identified that levels of service should be left to the market to decide.</p> <p>Condition I: Most responses didn't identify whether strengthening to the code was required and only a few companies highlighted the need for further amendments to the code. One response proposed that the issue of sufficient coverage under the code should be considered by the Interim Code Panel.</p> <p>General comments made in the responses included:</p> <ul style="list-style-type: none"> Condition G and I already only relates to domestic customers. The definition of “business customer”, “domestic customer” and “domestic premises” within the condition needs to be aligned to the eligibility criteria for the market. Some concern expressed that market codes were written to facilitate the market not replace licence 	<p>Conditions Q, G and I – Section 4.3</p>

Consultation questions	Response Summary	Section reference
	<p>obligations. Further work is required to ensure that the market codes adequately replace these obligations.</p>	
<p>Q12 Do you agree with our proposals for the conditions within Section 5.1.2 on equivalence? Please respond separately on each of the eight conditions discussed.</p>	<p>Summary of responses: Overall agreement for proposals but also desire to see drafting and some were caveated on this basis.</p> <p>F6 (arm’s length trading): the majority of responses agreed with the proposal though several responses questioned the necessity of the amendment.</p> <p>There were several objections to the amendment. One response objected to the proposed amendment and thought it insufficient to give new entrants confidence. There were also concerns that it would restrict undertakers (with water supply licensees) from properly preparing for the market; and increase costs.</p> <p>F6 A2A (Certificate of Adequacy): There was broad agreement for the proposed introduction of a separate certificate of adequacy for non-household retail, though responses expressed concern that a separate certificate would create additional regulatory burden on appointees. One response highlighted that if a separate certificate for non-household retail was introduced, then it should be carved out of the existing obligation.</p> <p>R1-3 access codes for WSL: Broad agreement for the proposed changes. However, respondents were concerned with how combined supplies might work as they had not seen information about a transition scheme.</p> <p>R5.1 in-area trading ban: ~Responses largely agreed with the proposed approach to remove the in area trading ban and maintain the requirement for arm’s length trading. However, there were several objections. One response was very concerned with the removal of the in-area trading ban pre-market opening. While another objected to retaining the arm’s length trading obligation as it was concerned it would create inefficiency for undertakers preparing for market opening.</p> <p>R5.3 relationship with licensees: Responses agreed with the removal of the obligation to notify Ofwat if its relationship with a water supply licensee changes. However, one objected to the proposal and expressed concern about Ofwat’s ability to effectively use its ex-post powers without the information.</p> <p>R7-9 Obligations about information: Responses supported the proposed approach, as long as there were replacement provisions in the WRC and MAC, and provided that combined supplies are also dealt with under a transition scheme.</p> <p>S Customer Transfer Protocol: Responses agreed with the proposal to remove the customer transfer protocol, and one response noted that it will need to be</p>	<p>Section 4.3</p>

Consultation questions	Response Summary	Section reference
	<p>retained for combined supplies in the absence of an alternative.</p> <p>N fees: Responses supported the introduction of a separate fee for non-household retail where the appointee hadn't exited retail as long as it was not in addition to the current fee i.e. no double-counting.</p>	
<p>Q13 Do you agree with the draft condition set out in Appendix A to enable the Market Arrangements Code? Are there any reasons why this condition should differ between the Appointment and the standard conditions of the WSSL?</p>	<p>There was general agreement for the proposed approach and no one identified a reason for the condition to differ between the WSSL and IoA.</p> <p>However, responses were concerned with the proposed drafting and many thought it could be simplified. In particular, responses were concerned about drafting the MAC principles into the condition as it would result in needing to amend the condition every time the principles were changed.</p> <p>In addition, one response thought the condition shouldn't include an obligation to comply with the MAC, stating it considered breaches of the code should be dealt with under the code.</p>	<p>Enabling the Market Arrangements Code – Sections 4.1 and 4.3</p>
<p>Q14 What are your views on the proposed 'stapling' condition set out in Appendix B requiring the company to adhere to the Wholesale Retail Code in its interactions with its own retail business? Does the proposed condition work alongside Schedule 8 of the Market Arrangements Code?</p>	<p>While responses were generally supportive of the principle of a stapling condition, undertakers expressed concern around the implications of the drafting. In particular, there was significant concern about the ability to appointees to comply with the condition without legally separating and new appointees thought it would place disproportionate burdens on their small companies.</p> <p>Other comments included:</p> <ul style="list-style-type: none"> • It conflicted with Government's intention in the WA14 and exit regulations. • It was not aligned with Schedule 8 of the MAC and there was the need for clarity on precedence with Schedule 8. • The condition as drafted appears to apply to all retail activities rather than just those in relation to the contestable market. • It might prevent shared services and that such sharing is necessary to preserve the current economies of scale and scope that were taken into account in PR14 • The current drafting did not work for appointees whose water and sewerage areas did not perfectly overlap. • One response was concerned that a stapling cause would dilute appointees' section 13 of the WIA91 right to appeal amendments to their conditions of appointment. 	<p>Stapling Condition – Section 3.3</p>
<p>Q15 Do you consider that the proposals will achieve the objective of equivalence, with</p>	<p>Responses presented mixed views. Several responses considered the proposals would achieve equivalence or at least go some way to achieving equivalence. Several responses thought it was unclear and a handful thought</p>	<p>Equivalence of treatment for retailers – Section 4.1.</p>

Consultation questions	Response Summary	Section reference
<p>the same obligations and opportunities for all retailers? If not, what additional suggestions do you have?</p>	<p>the proposals do not achieve equivalence. In particular, one response expressed (across the whole of its response) strong views that the proposals would not create equivalence between non-exited retailers, exited retailers and new entrants and proposed additional measures to mitigate an appointee's (and associated licensee's) dominant position.</p> <p>A number of responses also expressed concern about the proposed stapling condition and the requirements set out in Schedule 8 to the MAC, which were considered to place greater obligations on non-exited companies than appointees who had exited. In addition, there was concern that the proposals would impede market readiness and restrict wholesalers from being able to operate efficiently with their non-exited retailer.</p> <p>Another response highlighted that what really mattered was the general principle of equivalence and non-discrimination of competition law. It suggested that if needed a specific condition could require companies to have equivalent arrangements to relevant processes and to apply these arrangements in a way that avoids discrimination whilst complying with their statutory duties and exercising their rights under the Act.</p>	<p>Stapling Condition – Section 3.3</p>
<p>Q16 Do you have any other observations about our proposals on changes to the conditions for the Instruments of Appointment?</p>	<p>Only a handful of responses raised additional observations.</p> <p>Comments included:</p> <ul style="list-style-type: none"> • They will have a disproportionate financial impact on the new appointees that may stifle the development of new inset opportunities. • The obligations with regards to arm's length transactions could impact the financing arrangements of integrated incumbents. • The timing of amendments needs to be considered so they are delivered in the correct order and consideration should be given to the timing for company Boards to sign off on amendments. • In light of the amendments and retail market opening, new appointees need clarity on how Ofwat will apply the principle of customers being no worse off under new appointees than if they had remained with the incumbent. 	<p>Other proposed changes to the conditions of Appointment – Section 4.3</p>
<p>Q17 Are there any areas not covered in the proposals in which you consider that changes are required?</p>	<p>The majority of responses did not identify further areas for change. Those that did set out covered a wide range of issues, including:</p> <ul style="list-style-type: none"> • One response stated a desire for obligations on appointees to publish audited information on services provided between the wholesale and non-household retail functions including cost information. They also considered that new entrants should be able to procure some or all of these services from the appointee at the same price. 	<p>Other proposed changes to the conditions of Appointment – Section 4.3</p>

Consultation questions	Response Summary	Section reference
	<ul style="list-style-type: none"> • Another response expressed concern that there were insufficient obligations on appointees to provide quality information and queried what recourse there was if the data provided was inaccurate or incomplete impacting the retailer's ability to comply with its licence conditions. • There are areas where work is still ongoing on the codes and whether this may have implications for drafting conditions of appointment. • Consideration is needed on how access price requirements may develop and whether there was the scope for different prices in light of a menu of credit terms for retailers. • Better understanding is needed on how shadow operation and the retail exit regulations will interact. Need to consider a smooth transition and effective market opening. 	
<p>Q18 Are there any areas in your Appointment in which you think differences from the examples used will require detailed consideration in future work?</p>	<p>The majority of the responses did not identify any areas. Those that did:</p> <ul style="list-style-type: none"> • Thought there needed to be consideration given to the size of the appointee and the impact the changes would have on them. • Highlighted differences between IoAs across incumbent undertakers and also new appointees. 	<p>Special situations – Section 5</p>
<p>Q19 Do you agree that we should retain the three basic elements of financial stability, managerial competency and technical competency in assessing future licence applications?</p>	<p>The respondents generally agreed with retaining the approach, with a number of additional comments. The EA provided further definition about what the technical competence should include for sewerage services and water supply. It stated:</p> <p>“The technical competence assessment for sewerage services will need to consider the following aspects: drainage, sewerage, trade effluent treatment and conveyance, incident handling, chemicals, environmental issues, and sustainable drainage systems. For water supply services it will need to include the water efficiency duty and management of planned and unplanned events including droughts. The technical competency test currently asks that the applicant be aware of the role of the Drinking Water Inspectorate (DWI) and its responsibilities under the law and regulations. This should be extended to assess the duty to promote the efficient use of water under section 93A of the WIA91. This would make sure that both wholesalers and retailers are able to meet government policy objectives on water efficiency when they apply for their licences.”</p> <ul style="list-style-type: none"> • There were suggestions the management competences should include the ability to handle day to day customer responses. 	<p>Application process – Section 4.2</p>

Consultation questions	Response Summary	Section reference
	<ul style="list-style-type: none"> • There was a suggestion that application process should include separate assessments for water and sewerage services. • A comment that the process should harmonise with that in Scotland. 	
<p>Q20 Do you agree that gaining a retail future WSSL licence should be conditional on successfully completing market accession testing? Are there any aspects of the licensing process that could be further simplified to avoid duplication/overlap across the two processes?</p>	<p>Generally respondents agreed, though there were a number of suggestions:</p> <ul style="list-style-type: none"> • A respondent disagreed because market accession testing was likely to coincide with retail exit. • Another response suggested a two stage application process which grants the WSSL at with conditions in it before the licence becomes active. • A respondent expressed concerns regarding the process before market opening as CSD 0001 only comes into effect after market opening. It was concerned that there could be a delay to granting WSSLs should the MO have insufficient resources. • One respondent suggested that MOSL should enforce a training process like the one by Scottish Water. • Again, there were suggestions for alignment of Ofwat and WICS to remove any duplication of effort 	Application process – Section 4.2
<p>Q21 Do you have any comments on the proposal that licence applications for the future market should include the provision of a completed certificate of adequacy?</p>	<p>Overall responses supported the CoA being part of the application process, although a there were several comments:</p> <ul style="list-style-type: none"> • Suggestions that the timing and sequencing of the application process, CoA, market accession testing and granting of licences should be reviewed to ensure timescales required are efficient and reduce any administrative burden or duplication of effort. • Some companies suggest that the timetable to obtain a signed certificate authorised by the board of directors together with certified minutes is impractical. • CCWater stated that the CoA is self-certification and that it gives little protection to customers. • Another respondent stated that this is duplicating the process of market assurance. 	Application process – Section 4.2
<p>Q22 Do you have any comments about the coverage of sewerage in the licence application process and the role played by the Environment Agency?</p>	<p>There was support for this proposal</p> <ul style="list-style-type: none"> • The EA agree but before taking on this duty need to confirm how the work will be funded. • A number of respondents wanted to see further detail, including technical requirements for sewerage from the EA. • There were some calls to include other stakeholders such as Environmental Health and The Canals and Rivers Trust etc. 	Application process – Section 4.2

Consultation questions	Response Summary	Section reference
<p>Q23 Do you consider that the role of any sponsor should be maintained, limited or removed entirely? What are your reasons for this view?</p>	<p>Respondents largely felt that the role of the sponsor should be removed, with only a small number seeing a need for it.</p> <p>As the sponsor does not offer any guarantees or protection against a licensee failing, there was a view that the sponsor's role should be limited.</p> <p>However, some respondents identified positives of having a sponsor providing third party scrutiny.</p>	<p>Application process – Section 4.2</p>
<p>Q24 Do you have any comments about the proposals to include coverage of customer facing systems in the managerial competency tests?</p>	<p>The majority of respondents believed that testing customer facing systems was reasonable, although some believed that only the elements that support switching should be tested.</p> <p>Many companies spoke of the need for the tests to be proportionate to the scale of entry in the market.</p> <p>Multiple companies emphasised the need for the tests to not be overly burdensome and form a significant barrier to entry.</p>	<p>Application process – Section 4.2</p>
<p>Q25 Do you agree that the scale considerations are better dealt with via the certificate of adequacy rather than additional testing in the licence application process?</p>	<p>Generally there is support that scale considerations can be managed in the CoA, although many wanted more detail on how the CoA would work.</p> <p>There were comments on the stringency of the entry tests and that, if they are a light touch, then potentially having them both would be prudent. Some respondents supported more stringent entry tests on scale.</p> <p>A few responders raised that natural market forces would be the greatest limiter of scale and a reasonable business would not want to grow beyond its capability.</p>	<p>Application process – Section 4.2</p>
<p>Q26 Do you agree with our proposed transition approach for current retail only WSL?</p>	<p>Responses supported the proposed approach and requested further detail on the application process and timeline for existing water supply licensees.</p> <p>Several responses highlighted the need for formal transition plans. In particular, one response proposed introducing an additional condition (linked to a formal transition plan) to underpin transition.</p>	<p>Transition Scheme – Section 4.5</p>
<p>Q27 Do you agree with our proposed approach to transition current combined supply WSL?</p>	<p>The majority of responses supported the proposed approach as long as the market arrangements were in place at market opening and the transition scheme supported future development of upstream markets (and does not prejudice or hinder them).</p>	<p>Transition Scheme – Section 4.5</p>
<p>Q28 Do you agree with our proposed approach for creating self-supply licences?</p>	<p>The majority of responses supported the proposed approach to self-supply, however a variety of points were made:</p> <ul style="list-style-type: none"> • Some suggested that the certificate of adequacy should be required for self-supply licensees to assure the market and wholesalers of the financial and managerial stability of the licensee. • There were varying views on the fees for applying for a self-supply licence. Some suggested it should be at the same level as for a WSSL licence whilst 	<p>Special situations: self-supply – Section 5.3</p>

Consultation questions	Response Summary	Section reference
	<p>others suggested the fee level would reflect the uptake of self-supply licences.</p> <ul style="list-style-type: none"> Some undertakers were concerned that if there are too many self-supply licensees, retail cost would be pushed back to them. There were calls for greater definition around “associated entities”. 	
<p>Q29 Do you agree that there should be a new condition in current licences and Instruments of Appointment to underpin the required preparations?</p>	<p>Respondents were supportive of being ready for market opening but there were mixed views regarding whether it was necessary to have a specific licence condition.</p> <ul style="list-style-type: none"> Some respondents believed there are other incentives already in place for market opening including, the assurance framework board letter and Condition M of the Appointment (to provide the required information to Ofwat). Some stated that readiness was not wholly in the control of the individual organisations Respondents questioned whether the condition would have a sunset clause. There were questions about the penalties for failure to provide timely and accurate data. 	<p>Readiness – Section 3.2</p>
<p>Q30 If you agree that there should be a condition, should it cover both a general obligation and a specific link to a formal transition plan?</p>	<p>The majority of responses agreed that there should be a general obligation, however there was a mixed view on whether it should include a specific link to a formal transition plan.</p> <p>A number of companies’ preference was for a general condition so long as it is phrased as having “reasonable endeavours”, recognising the risk that companies could be required to comply with a range of steps for market opening that are not reasonably achievable in the time available or are outside management control.</p> <p>With regards to a specific link to a formal transition plan:</p> <ul style="list-style-type: none"> Some respondents felt that specific information and activity requirements will be helpful to avoid ambiguity and the misinterpretation of the actions needed Others felt the detail of how companies comply with the transition plan requirements should be left to companies and should not be specified as part of the condition. Additionally it was suggested that a formal transition plan could create further administrative burden and may prove a further barrier to entry. 	<p>Readiness – Section 3.2</p>
<p>Q31 Are there any additional provisions that you think it would be helpful to include in a licence condition on company readiness or any other</p>	<p>There were a number of views expressed through response to this question, including:</p> <ul style="list-style-type: none"> the condition could also link with participation in market led assurance and testing programmes; the condition should be time-limited; 	<p>Readiness – Section 3.2</p>

Consultation questions	Response Summary	Section reference
comments/concerns you would make?	<ul style="list-style-type: none"> the impact on small companies (in both financial and resource terms) should be proportionate; and new retailers should be collecting consistent information using standard application forms. <p>Respondents highlighted the need for further information, including an understanding of the planned sequence of enabling parts of the codes as well as sanctions would be deployed if participants were not market ready.</p> <p>There were also views that there may be a more pragmatic approach to gaining assurance which requires the need to fully understand Ofwat and MOSL's requirements.</p>	
Q32 Do you consider that implementing an auction style allocation process similar to the one that Ofgem has adopted ahead of a backstop allocation process would be the best approach to protecting customers in the event of the failure of a retailer?	<p>The majority of respondents were supportive in principle of market-based allocation although some do not consider market-based mechanism a priority for market opening.</p> <p>A small number favour the backstop MO administered allocation process (per MAP3 and Scotland) citing seamless market and cherry picking concerns.</p> <p>Some respondents were cautious, citing the need to draw on experience elsewhere (e.g. energy), customers' protection concerns, risk of favouring large incumbents, and wholesaler exposure.</p>	Related policy issues – Section 6
Q33 Do you have any suggestions about the best approach to ensuring that the new market arrangements are proportionate for a) smaller wholesale companies and b) small retailers.	<p>Responses to the question were mixed. Where there was support for a proportionate approach it was mainly expressed in terms of system interface requirements.</p> <p>In addition, several responses expressed concern about level playing field issues, if a different approach was allowed for small retailers.</p> <p>New appointees were generally supportive of a different approach for small wholesalers. In addition they were concerned about how the new retail market would work with existing inset competition. In particular they were concerned about the impact of the stapling condition on their companies and were keen to understand how:</p> <ul style="list-style-type: none"> End user charges will be set for non-households; How wholesale charges will be set; and How the Wholesaler-New Appointee-Retailer relationship will work. 	Special situations: small companies – Section 5.2
Q34 Do you have any suggestions about the best approach for companies operating wholly or mainly in Wales?	<p>The majority of responses commented positively about Welsh Companies participating in the new market arrangements for eligible customers. There were a number of comments to this question, largely focused on eligibility:</p> <ul style="list-style-type: none"> Only a small proportion of the market is eligible in Wales. Consideration is needed regarding dealing with "cross border" sites where one service was eligible and the other was ineligible. 	Special situations: Wales – Section 5.1

Consultation questions	Response Summary	Section reference
	Further points were raised around the proportionality of future market arrangements as well as implications switching may have on non-household retail price controls.	
<p>Q35 Do you have any comments about the circumstances in which a retail supplier should be able to opt out of Supplier of First Resort('SoFR') arrangements?</p>	<p>Among those respondents who commented on these issues, there was broad agreement that:</p> <ul style="list-style-type: none"> • There should always be at least one SoFR in each Area (Undertaker or Acquiring Licensee as relevant); and • Other retailers should be entitled to voluntarily Opt-In or Opt-Out for the purposes of Gap Sites depending on their strategy (e.g. niche/regional focus) and related cost to serve. <p>There was broad agreement with the proposed criteria for opt-out suggested in the consultation.</p>	<p>Related policy issues – Section 6</p>
<p>Q36 Do you agree with our proposed approach for the developer services market and the related process proposed within MAP3?</p>	<p>Respondents voiced a number of concerns over proposals for developer services.</p> <ul style="list-style-type: none"> • Sought clarification on building water supplies. One company proposed it should be excluded from the market unless it related to a permanent supply for a non-household customer. • Raised sections 104 & 106 agreements specifically and whether the proposed processes were in-line with the WIA 91. There was concern that the MAP forces sewerage to follow the same process as for water despite legislation differing. • Queried the principles of introducing retail competition into this service and suggested that this will add unnecessary complexity to the process, which will increase the burden on developers. • Suggested the MAP3 proposals add complexity and cost to connection services; and constrain developers' choice of counter-party. The responses suggested that commercial and market arrangements for the provision of network infrastructure should be treated separately and distinctly from those for a commodity • Suggested that the processes cannot be crystallised until charging rules for the services are in place. • There were requests for clarification regarding the dispute resolution process. 	<p>Related policy issues – Section 6</p>
<p>Q37 Do you agree with our assessment of the interactions between the various parties?</p>	<p>There were several comments about the figure 6 (interactions in the developer services market):</p> <ul style="list-style-type: none"> • Overall lack of clarity over what the diagram is trying to describe – needs more detailed explanation around relationships and circumstances which apply; and definitions used. 	<p>Related policy issues – Section 6</p>

Consultation questions	Response Summary	Section reference
	<ul style="list-style-type: none"> • Concern that the diagram in the consultation misrepresents the point at which incumbents compete with alternative providers. • A concern about lack of clarity around process and information requirements. They support the use of the 'Water UK approach' to developing the policy issue. • More details of how and what the relationship between the wholesaler and incumbent customer facing developers services will involve. • Clarification is sought regarding the interface between SLOs and wholesalers. <p>Other concerns were also identified, including:</p> <ul style="list-style-type: none"> • Challenges as to how this will operate effectively where there is a WoC and a WaSC in place. • "Incumbent customer facing developer services" needs to be defined due to potential inconsistency between defining some of the developer services activity as retail. 	
<p>Q38 Do you agree with principle that Special Agreements should be contestable and the current thinking on the details of the approach outlined in section 9.2.5?</p>	<p>The majority of responses suggested that special agreements should be contestable in principle, but that there were some degrees of complexity associated with their set up.</p> <p>There were concerns that tariff arrangements, as set up in the codes, would not cater for some of the tariff arrangements, for example if the first volume block of water was free and subsequent blocks were then charged or trade effluent arrangement, which did not follow the Mogden formula.</p> <p>Some expressed concern with releasing potentially commercially sensitive information and see it as a large challenge to balance this and transparency. Some stated that the percentage of normal wholesale charge may be confusing.</p> <p>A number of respondents mentioned that the cost of changing two way contracts into three way ones. Also some incumbents don't want to lose their rights of termination or modification in the current contracts.</p> <p>On non-price terms few respondents thought information on areas such as 'account management' and 'loggers fitted' risk creating a register that is so large it becomes less helpful to market participants than one which records only price and very specific information.</p> <p>One response suggested that removing the in area trading ban could allow associated retailers of incumbents to set up special arrangements.</p>	<p>Related policy issues – Section 6</p>
<p>Q39 Do you agree with the principle that there should be early publication of</p>	<p>There were mixed views regarding the early publication of charges. Many respondents felt that 8/9 months was too early, even amongst those who generally agreed with the principle, including non-wholesalers.</p>	<p>Related policy issues – Section 6</p>

Consultation questions	Response Summary	Section reference
<p>wholesale charges and the current thinking on the details of the approach outlined in section 9.3?</p>	<p>Concerns expressed included:</p> <ul style="list-style-type: none"> • If companies wanted to change their approach, there would be no time to do an impact assessment, customer and stakeholder consultation, or Board approval. • Wholesalers could feel obliged to build in an excessive amount of risk. • Some companies questioned the relevant RPI period to use, suggesting that the use of OBR forecast RPI quarter 4 as an alternative. • A key factor in establishing tariff denominators is the usage in the summer and the publication of the wholesale tariff pre summer would not allow summer usage in particular this to be taken into account. • Some suggested a high level statement in July to help retailers, followed by more detailed guidance in the autumn. • There were concerns that innovative tariffs would be stifled. • Another consequence of early publication of wholesale tariffs (particularly if it is as early as July) is the impact on the company's ability to comply with the Wholesale Revenue Forecasting Incentive Mechanism (WRFIM), which penalises companies if their revenues fall outside of +/-2% of revenue levels set at the final determination. <p>There were however a number of respondents that recognised the benefit of early publications for the retailer.</p>	
<p>Q40 Do you agree that wholesalers should only levy charges that are in their wholesale charges schemes or published as special agreements? If not, please provide arguments as appropriate to support your position.</p>	<p>There was general agreement with this. Transparency was a recurring theme in responses, however a number of questions were posed around requirements to be included:</p> <ul style="list-style-type: none"> • There should be a standard list of non-primary charges that companies are required to include in their wholesale charges scheme if they wish to levy these charges. • Some felt it clearly cannot apply to all developer services provided by wholesalers as there are customer specific services that will be one-off and bespoke. • The consultation does not say how it will apply to NAVs that do not have an obligation to publish a wholesale 'charges scheme'. 	<p>Related policy issues – Section 6</p>
<p>Q41 Do you agree with our proposed approach to implement these licence changes? If not, how should we go about</p>	<p>Respondents were supportive of the use of for section 13 or section 17J (of the WIA91) in the first instance before the use of section 55 powers (WA14). There was a strong emphasis on consultation and stakeholder engagement.</p>	<p>Process considerations – Section 7</p>

Consultation questions	Response Summary	Section reference
making these changes?	Some respondents called for greater clarity about timescales, whilst the timing of the removal of the in area training ban was reemphasised by the respondents opposed its early removal.	

Suspendisse euismod malesuada ultrices. Quisque vehicula, metus eu accumsan convallis, enim metus lacinia mauris, sit amet lobortis eros neque ut est. Aenean hendrerit diam et arcu sollicitudin rutrum.

A1.1 Numbered Appendix Heading 2

Suspendisse euismod malesuada ultrices. Quisque vehicula, metus eu accumsan convallis, enim metus lacinia mauris, sit amet lobortis eros neque ut est. Aenean hendrerit diam et arcu sollicitudin rutrum.

A1.1.1 Numbered Appendix Heading 3

Suspendisse euismod malesuada ultrices. Quisque vehicula, metus eu accumsan convallis, enim metus lacinia mauris, sit amet lobortis eros neque ut est. Aenean hendrerit diam et arcu sollicitudin rutrum.

A2 Draft WSSL

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 by sections 17H(1) and 17HA(1) of the Water Industry Act 1991, having consulted where appropriate the Welsh Ministers, hereby determines that the following conditions shall be standard conditions for water supply and sewerage licences:

PART A

CONDITIONS APPLICABLE TO ALL WATER SUPPLY 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;

“Condition A2 Direction” means a direction issued by the Authority pursuant to Part A, Condition 2 of these conditions specifying that some or all of the conditions in a specific part or parts of these conditions are to have effect in the Licence and, if appropriate, specifying the manner in which, the circumstances in which and/or the area in which the Licensee will be required to comply with those conditions;

“Customer Protection Code of Practice” means the code of practice issued by the Authority;

“Environment Agency” means the body established under section 1(1) of the Environment Act 1995;

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

“Interim Supply Code” means the code issued by the Authority under section 63AF and/or section 110O of the Act;

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

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

“Market Arrangements Code” means the document designated by the Authority as the Market Arrangements Code;

“Natural Resources Body for Wales” means the body established under article 3 of the Natural Resources Body for Wales (Establishment) Order 2012;

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

“Part” means a part of these conditions;

“Retail Market Code” means the Wholesale Retail Code, the Interim Supply Code or the Retail Exit Code as the context so requires; and

“Wholesale Retail Code” means the code issued by the Authority under section 66DA and/or section 117F 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) Words and expressions used in these conditions and references in and to these conditions shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.

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

(6) Any reference, express or implied, to any enactment includes:

(a) that enactment as amended, supplemented, applied or replaced by or under any other enactment from time to time;

(b) any enactment which that enactment re-enacts (with or without modification); and

(c) any subordinate legislation made from time to time under that enactment, including, where applicable, that enactment as amended, supplemented, applied or replaced as described in paragraph (6)(a) above or under any enactment which it re-enacts as described in paragraph (6)(b) above.

(7) In these conditions, any reference to any licence, code, rules, scheme, agreement, statement or other regulatory instrument or any provision thereof is a reference to that instrument or provision as amended, supplemented, transferred, novated, revised, applied or replaced from time to time.

(8) The words “including” and “include” shall mean including without limitation and include without limitation, respectively.

(9) Specific words indicating a type, class or category of thing do not restrict the meaning of general words following such specific words, such as general words introduced by the word “other” or a similar expression. Similarly, general words followed by specific words shall not be restricted in meaning to the type, class or category of thing indicated by such specific words.

2. APPLICATION OF PARTS OF STANDARD CONDITIONS

How Parts of this licence are given effect

(1) Other than condition 1, this condition 2, condition 10 and condition 11 of Part A of these conditions, any other condition or Part of these conditions will have effect in a Licence only if:

(a) in relation to any of the remaining conditions in Part A or the conditions in any other Part, the Secretary of State has provided, by a scheme made under Schedule 11 of the Water Act 2014 that it will have effect; or

(b) in relation to any of the remaining conditions in Part A, the Authority, at any point after having decided to grant a Licence, gives a Condition A2 Direction to the Licensee; or

(c) in relation to the conditions in any other Part, the Authority, at any point after having decided to grant or modify a Licence so as to grant the Licensee an authorisation specified in section 17A(2) of the Act, gives a Condition A2 Direction to the Licensee;

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

Variation of terms

(3) If a Part of these conditions 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 some or all of that Part of the conditions has effect in the Licence; or

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

the Authority may approve that variation or cessation of the relevant Condition A2 Direction and specify the date on and from which it will have effect.

Interpretation

(4) References in a condition to a Part of these conditions, the 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

(1) 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 and which applies to the activities authorised by its Licence; 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—

(a) that all of the arrangements required to meet the obligations mentioned in condition 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 condition 3 above.

(2) For the purposes of paragraph (1) “a prescribed certificate” means a certificate signed and dated after 1st March in that year by:

(a) 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; or

(b) an authorised signatory of the Licensee where that Licensee is not a limited company.

(3) Where any notice served on the Licensee by the Authority so requires, the certificate submitted under this condition 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 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 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 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 undertaker during any emergency or unplanned event (save any which are manifestly unreasonable); or
- (c) reasonable instructions given to it by a relevant undertaker in relation to any water quality incidents or any pollution incidents.

(2) For the purposes of 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 and/or sewerage system;
 - (iii) protecting customers;
 - (iv) mitigating adverse effects upon the environment;
 - (v) maintaining essential supplies and services; or
 - (vi) conserving supplies.

(3) Any question as to the reasonableness of any instructions given under paragraph (1) where those instructions relate to an urgent incident shall be resolved by referring that question to the Authority for its determination.

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

(5) A reference under paragraph (3) shall not be made in respect of any instructions given under this condition 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 or any licence, code or rule produced pursuant to a requirement of 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 condition.

(3) Any question as to the reasonableness of—

- (a) any requirement to provide information under paragraph (1); or
- (b) any condition proposed by the Licensee under paragraph (2),

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

(4) A reference under 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 condition 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 water supply and/or sewerage service provision; or

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

(b) if a sensitive customer 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 sensitive customers; or

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

(8) For the purposes of paragraph (6), an incident includes regulatory infringements which may put the Licensee or relevant 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 paragraphs (6) and (7), a sensitive customer is a vulnerable non-household customer and includes any non-household customer for eligible premises occupied by the sick; the elderly; the disabled; or other vulnerable sections of the population; and/or which is a hospital; or a school;

(10) Under 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. 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 condition 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)).

8. 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 or the Water Act 2014.

(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 condition to provide any information which would be protected from disclosure or production in proceedings in the High Court on grounds of legal professional privilege.

9. Licence fees

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

(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 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 condition, 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 supply 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 supply 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 CMA) which related to the Licensee's water supply or sewerage 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 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 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 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 paragraph (4)(c), a reference under section 17K(2) shall be taken to have related to the Licensee's water supply or sewerage 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 condition, “year” means a period of 12 months beginning on 1st April.

10. 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 the Secretary of State, by the Authority, in any of the circumstances specified in paragraph (2).

(2) The circumstances mentioned in 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 condition 9 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 or sewerage services using the supply systems of any 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 condition 11 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 condition—

“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);
- (b) in relation to a sewerage undertaker, a requirement imposed on the sewerage undertaker by section 94 of the Act (general duty to provide sewerage system); and
- (c) in relation to the Licensee, any condition of its Licence or any statutory requirement imposed on 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).

11. Notice of revocation

(1) A notice of revocation under condition 10(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 paragraph (2), the reasons for this.

(2) Except in the case of urgency or where a notice of revocation is served in the circumstances set out in condition 11(3) or where the Licensee has consented under condition 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 condition 10(1) above.

(3) The Secretary of State or the Authority may serve a notice of revocation in respect of the circumstances set out in condition 10(2)(l) to (s) above which will take effect 24 hours after the date and time on which the Secretary of State or the Authority serves the notice under condition 10(1) above.

(4) At any time after the service of a notice under condition 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 condition 10(1) above.

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

PART B – CONDITIONS APPLICABLE TO WATER SUPPLY AND SEWERAGE LICENCES WITH RETAIL AND RESTRICTED RETAIL AUTHORISATIONS

1. Market Arrangements Code

Obligations in relation to the Market Arrangements Code

(1) The Licensee must:

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

(b) take all steps within its power to ensure that the Market Arrangements Code remains a document that:

(i) is designed to facilitate principles set out in Schedule 1 of the Market Arrangements Code (the “MAC Principles”);

(ii) conforms to the requirements of paragraph 2 of this condition in relation to the modification of the Market Arrangements Code; and

(iii) makes express provision for the matters described in paragraph (3) of this condition.

Modification of the Market Arrangements Code

(2) 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) change proposals for the modification of the Market Arrangements Code may be made by any member of the Panel constituted under the Market Arrangements Code pursuant to paragraph 3(d) of this condition (“**the Panel**”), by the Authority and by such other persons or bodies as may be set out in the Market Arrangements Code;

(b) every change proposal 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 change proposal are able to be properly considered by the relevant decision makers;

(d) the question of whether any change proposal better facilitates the achievement of the MAC Principles is able to be properly evaluated by the parties to the Market Arrangements Code;

(e) change proposals require Authority approval;

(f) change 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;

where they are raised by a person other than the Authority, not to be withdrawn without the Authority’s prior consent; and

to proceed in accordance with any timetable(s) directed by the Authority in relation to the raising of a change proposal, the completion of relevant procedural steps and the implementation of the change proposal.

(g) a final report is prepared including:

(i) a proposed implementation date either:

A. in accordance with any direction(s) issued by the Authority under paragraph (2)(h); or

B. where no direction has been issued by the Authority under paragraph (2)(h), 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 change proposal;

(iii) an assessment of the extent to which the change proposal would better facilitate achieving the MAC Principles and a detailed explanation of the reasons for that assessment; and

(iv) an assessment of any potential impact on, or consequential amendment to, any other Retail Market Code.

(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 change proposal report prepared in accordance with paragraph (g) and in particular whether the change would, as compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles;

(j) the Panel, having regard to whether the change 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;

(k) completion of each of the procedural steps outlined in this paragraph (2) to the extent that they are relevant, is in accordance with any timetable(s) directed by the Authority;

(l) the change proposal report prepared in accordance with paragraph (g) (and submitted to the Authority pursuant to the procedures described in paragraph (g)) 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 change proposal;

(m) any proposals to modify the Market Arrangements Code must be designed to better facilitate the achievement of the MAC Principles; and

(n) no modification of the Market Arrangements Code may be made unless the Authority, having had regard to the MAC Principles, directs the Licensee, in conjunction with every other Licensee and Appointee, to modify the Market Arrangements Code in such manner as is stated in that direction.

Contents of the Market Arrangements Code

(3) The Market Arrangements Code shall make express provision in relation to the following matters:

(a) the creation of an agreement, to which the Licensee, every other Licensee, every other Appointee shall be a party, and which binds the Licensee to comply with the terms of the Market Arrangements Code (the “**MAC Framework Agreement**”);

(b) 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 trading conditions as are set out in the MAC Framework Agreement;

(c) terms that provide for the Licensee 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;

(d) arrangements for establishing and maintaining a 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;

(e) arrangements for the establishment and funding at all times of a body to perform the role of Market Operator fulfilling the functions set out in the Market Arrangements Code; and

(f) 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.

2. Customer Protection Code of Practice

- (1) The Licensee must comply with the Customer Protection Code of Practice.
- (2) The Customer Protection Code of Practice shall contain the procedure for its own modification.

A3 Tracked-changes version of the draft WSSL, highlighting areas of change since the consultation

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~~ Welsh Ministers, hereby determines that the following conditions shall be standard conditions for ~~the various authorisations under all~~ water supply and sewerage licences:

PART A

~~STANDARD CONDITIONS~~ APPLICABLE TO ALL OF WATER SUPPLY 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;~~

“Condition A2 Direction” means a direction issued by the Authority pursuant to Part A, Condition 2 of these conditions specifying that some or all of the conditions in a specific part or parts of these conditions are to have effect in the Licence and, if appropriate, specifying the manner in which, the circumstances in which and/or the area in which the Licensee will be required to comply with those conditions;

“Customer Protection Code of Practice” means the code of practice issued by the Authority;

“Environment Agency” means the body established under section 1(1) of the Environment Act 1995;

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

“Interim Supply Code” means the code issued by the Authority under section 63AF and/or section 110O of the Act;

“Licence” means the document issued by the Authority ~~comprising~~containing 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” means the document designated by the Authority as the Market Arrangements Code;

“Natural Resources Body for Wales” means the body established under article 3 of the Natural Resources Body for Wales (Establishment) Order 2012;

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

“Part” means a part of these conditions;

“Retail Market Code” means the Wholesale Retail Code, the Interim Supply Code or the Retail Exit Code as the context so requires; and

“Wholesale Retail Code” means the code issued by the Authority under section 66DA and/or section 117F 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) Words and expressions used in these conditions and references in and to these conditions shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.

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

(6) ~~In these conditions, a~~Any reference, express or implied, to any enactment ~~includes provision of—~~

(a) that enactment as amended, supplemented, applied or replaced by or under any other enactment from time to time;

(b) any enactment which that enactment re-enacts (with or without modification); and

(c) any subordinate legislation made from time to time under that enactment, including, where applicable, that enactment as amended, supplemented, applied or replaced as described in paragraph (6)(a) above or under any enactment which it re-enacts as described in paragraph (6)(b) above.

(7) In these conditions, any reference to any licence, code, rules, scheme, agreement, statement or other regulatory instrument or any provision thereof is a reference to that instrument or provision as amended, supplemented, transferred, novated, revised, applied or replaced from time to time.

(8) The words “including” and “include” shall mean including without limitation and include without limitation, respectively.

(9) Specific words indicating a type, class or category of thing do not restrict the meaning of general words following such specific words, such as general words introduced by the word “other” or a similar expression. Similarly, general words followed by specific words shall not be restricted in meaning to the type, class or category of thing indicated by such specific words.

2. APPLICATION OF PARTS OF STANDARD CONDITIONS

How Parts of this licence are given effect

(1) Other than condition 1, this condition 2, condition 10 and condition 11 of Part A of these conditions, any other condition or Part of these conditions will have effect in a Licence only if:

(a) in relation to any of the remaining conditions in Part A or the conditions in any other Part, the Secretary of State has provided, by a scheme made under Schedule 11 of the Water Act 2014 that it will have effect; or

(b) in relation to any of the remaining conditions in Part A, the Authority, at any point after having decided to grant a Licence, gives a Condition A2 Direction to the Licensee; or

(c) in relation to the conditions in any other Part, the Authority, at any point after having decided to grant or modify a Licence so as to grant the Licensee an authorisation specified in section 17A(2) of the Act, gives a Condition A2 Direction to the Licensee;

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

Variation of terms

(63) If a Part of these conditions 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 some or all of that Part of the ~~standard~~ conditions has effect in the Licence; or

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

the Authority may approve that variation or cessation of the relevant Condition A2 Direction and specify the date on and from which it will have effect.

Interpretation

(74) 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

(1) 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 and which applies to the activities authorised by its Licence; and

~~_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—

(a) that all of the arrangements required to meet the obligations mentioned in condition 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 condition 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; or

(b) an authorised signatory of the Licensee where that Licensee is not a limited company.-

(3) Where any notice served on the Licensee by the Authority so requires, the certificate submitted under this paragraph condition 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 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 or unplanned event (save any which are manifestly unreasonable); or

(c) reasonable 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 and/or sewerage system;
- (iii) protecting customers;
- (iv) mitigating adverse effects upon the environment;
- (v) maintaining essential supplies and services; or
- (vi) conserving supplies.

(3) Any question as to the reasonableness of any instructions given under ~~sub~~-paragraph (1) ~~(a)~~ where those instructions relate to an urgent incident 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~~ A reference under paragraph (3) shall not be made in respect of any instructions given under this ~~paragraph condition 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 or any licence, code or rule produced pursuant to a requirement of 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 condition~~.

(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 condition 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 water supply and/or sewerage service provision; or

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

(b) if a special consumers sensitive customer 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 sensitive customers; 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 sensitive customer is a vulnerable non-household customer and includes any non-household customer for eligible premises occupied by the sick; the elderly; the disabled; or other vulnerable sections of the population; and/or which is a hospital; or a school.

~~_special consumer is a person, or member of a class of persons, who—~~

~~((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.~~

87. 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 condition](#) 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)).

98. 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 [or the Water Act 2014](#).

(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 condition](#) to provide any information which would be protected from disclosure or production in proceedings in the High Court on grounds of legal professional privilege.

109. Licence fees

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

(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 condition](#), 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 [supply](#) 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 [supply](#) 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 [CMA competition authority](#)) which related to the Licensee's water supply [or sewerage](#) 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 or sewerage 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 condition, "year" means a period of 12 months beginning on 1st April.

1110. Revocation

(1) A licence subject to these ~~Conditions~~ 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 the Secretary of State~~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~~ condition 9 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 or sewerage services using the supply systems 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 condition 11 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 condition—

“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);
- (b) in relation to a sewerage undertaker, a requirement imposed on the sewerage undertaker by section 94 of the Act (general duty to provide sewerage system); and
- (bc) in relation to the Licensee, any condition of its licence or any statutory requirement imposed on 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).

11. Notice of revocation

12.—(1) A notice of revocation under paragraph 11 condition 10(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 the case of urgency or where a notice of revocation is served in the circumstances set out in condition 11(3) or where the Licensee has consented under paragraph condition 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 condition 10(1) above.

(3) The Secretary of State or the Authority may serve a notice of revocation in respect of the circumstances set out in condition 10(2)(l) to (s) above which will take effect 24 hours after the date and time on which the Secretary of State or the Authority serves the notice under condition 10(1) above.

(34) At any time after the service of a notice under paragraph condition 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 condition 10(1) above.

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

PART B – ~~STANDARD CONDITIONS APPLICABLE TO WATER SUPPLY AND SEWERAGE LICENCES WITH RETAIL AND RESTRICTED RETAIL AUTHORISATIONS ONLY~~

1. Market Arrangements Code

Obligations in relation to the Market Arrangements Code

(1) The Licensee must:

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

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

(i) is designed to facilitate principles set out in paragraph {1.2} Schedule 1 of the Market Arrangements Code (the “MAC Principles”);

(ii) conforms to the requirements of paragraph 2s {1.3} of this condition in relation to the modification of the Market Arrangements Code; and;

(iii) makes express provision for the matters described in paragraph (3)s {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.]~~

Modification of the Market Arrangements Code

(2) 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) change proposals for the modification of the Market Arrangements Code may be made by any member of the Panel constituted ~~in [section 5] of~~under the Market Arrangements Code pursuant to paragraph 3(d) of this condition (“the Panel”), 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~~change proposal 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~~change proposal are able to be properly considered by the relevant decision makers;

(d) the question of whether any ~~proposed modification~~change proposal better facilitates the achievement of the MAC Principles is able to be properly evaluated by the parties to the Market Arrangements Code;

(e) ~~modifications~~change proposals require Authority approval;

(f) ~~modification~~change 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-change

proposal, the completion of relevant procedural steps and the implementation of the ~~modification-change~~ proposal.

(g) a ~~modification-final~~ report is prepared including:

(i) a proposed implementation date either:

A. in accordance with any direction(s) issued by the Authority under paragraph ~~(2)(h)1.3.1(g)(iii)~~; or

B. where no direction has been issued by the Authority under paragraph ~~(2)(h)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-change proposal~~; and

(iii) an assessment of the extent to which the ~~proposed modification-change proposal~~ would better facilitate achieving the MAC Principles and a detailed explanation of the reasons for that assessment; and

(iv) an assessment of any potential impact on, or consequential amendment to, any other Retail Market Code.

(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-change proposal~~ report prepared in accordance with paragraph (g) and in particular whether the ~~modification-change~~ 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-change~~ 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;:-

(k) completion of each of the procedural steps outlined in this paragraph (2)1.3.4 to the extent that they are relevant, is in accordance with any timetable(s) directed by the Authority;

(l) the ~~modification-change proposal~~ report prepared in accordance with paragraph (g) (and submitted to the Authority pursuant to the procedures described in this paragraph (g)1.3.4) 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-change~~ proposal;

(m) Any proposals to modify the Market Arrangements Code must be designed to better facilitate the achievement of the MAC Principles; ~~and~~

(n) 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.

Contents of the Market Arrangements Code

(3) The Market Arrangements Code shall make express provision in relation to the following matters:

(a) 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”);

(b) 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—trading~~ conditions as are set out in the MAC [Framework][Accession] Agreement;

(c) 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;

(d) arrangements for establishing and maintaining a pPanel (“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~~

(e) 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; and

(f) 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.

2. Customer Protection Code of Practice

(1) The Licensee must comply with the Customer Protection Code of Practice.

(2) The Customer Protection Code of Practice shall contain the procedure for its own modification.