

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

Q1 Do you agree with the proposal to have separate licences covering water and wastewater retail? If not, please explain how you envisage that a single licence for water and wastewater would differ?

Yes, in principle we are content for there to be separate licences for water and wastewater retail. This provides flexibility for those retailers who only wish to provide water or sewerage retail services and is consistent with the design of the Codes and the Scottish framework.

Q2 Do you agree with the proposed amendments to standard conditions for the new water supply and sewerage service licence (WSSL)?

Yes, the proposals seem reasonable. We would wish to see the standard conditions applicable to sewerage licences only which are yet to be drafted.

Q3 Do you think any of the proposed amendments listed in Table 3 are non-routine and require additional discussion? If so, why?

The proposed amendments appear to be relatively straightforward. We would wish to see the guidance for how a revised Certificate of Adequacy would be applied in practice

Q4 Do you agree with the proposed approach to maintaining customer protection in the future WSSL?

In principle, we are content with the proposal to extend the existing annual Certificate of Adequacy to incorporate confirmation that the retailer has adequate resources to take on substantial additional customers without its customers experiencing a deterioration in service.

Q5 Do you agree with the proposed approach to the Market Arrangements Code enablement?

We accept that there should be a licence condition which requires market participants to comply with the Market Arrangements Code.

Q6 Do you have any specific comments on the legal drafting?

Section 1.1.2 says "The Appointee/Licensee must.....take all steps within its power...." This is very vague and therefore its not clear what is intended here, particularly when there is already an overarching obligation to comply with the Market Arrangements Code (MAC).

Section 1.2 replicates the MAC principles as documented within the MAC. Its not clear what happens if the MAC principles are amended so as to conflict with the licence condition. It seems an unnecessary duplication particularly as there is an overarching obligation to comply with the MAC. Therefore we suggest it would be better for the licence condition to simply make reference to the MAC principles rather than replicate the MAC principles.

Section 1.3 is largely saying the same things as within the MAC therefore we would suggest that that this section be removed from the licence condition and retained only within the MAC.

Q7 Do you agree with the proposed approach to include requirements on arm's length transactions and non-discrimination?

We are content with a condition that requires retailers to maintain arm's length transactions with a related wholesaler and not show undue preference to a related wholesaler if these requirements apply equally to all retailers, including those that have exited the business retail market and those who have not.

We support the removal of the in-area trading ban and note that this is proposed to be achieved in October 2015.

Q8 Do you have any other comments on our proposed conditions in this area?

Section 5.1 (c) – We suggest that this should include the same qualification as 5.1 (b) ie "(save any which are manifestly unreasonable)".

Section 6.9 (a) – We suggest the words "regularly requires water urgently on medical or other grounds" should be added after "the Licensee and the relevant undertaker agree".

Section 7.1 – For a retailer, simply by being in existence and seeking to compete in the business retail market could "impair or put at risk the proper, efficient and economical performance by any relevant undertaker". We question whether this remains appropriate as it is not clear what it is trying to achieve.

Section 7.2 – This clause should be removed because confidentiality is addressed within the Wholesale-Retail Code (Business Terms section 16.1.2). If it is retained then it needs to be amended to be wide enough to cover disclosure to sub-contractors where they need information to provide services on behalf of a retailer.

Section 11.2 (e)(ii) – We suggest the words "as is serious enough to make it inappropriate for the Licensee to continue to hold its Licence" should also be added to 11.2 (e)(i).

Q9 Do you have any other observations about our proposals on changes to the standard conditions for the new Water Supply Licence?

No, we have no further observations at this stage.

Q10 Are there any areas not covered in the proposals in which you consider changes are required?

We have not identified any other areas requiring changes at this stage.

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.

Condition Q Drought Payments – We agree that Condition Q should be amended to remove references to non-household customers because the obligation is now covered within the Business Terms of the Wholesale-Retail Code. However, we note that the detail set out within Condition Q is not yet incorporated within Schedule 3 of the Business Terms which is yet to be drafted.

Condition G Customer complaints and emergencies – We think it will be easier for retailers if as many obligations are incorporated within the Code rather than partially within the Code and partially within conditions of Appointment. Therefore we agree that Condition G be amended so that it is only applicable to household customers. The aspects of Condition G which also apply to non-household customers, and are not addressed elsewhere, should be incorporated within the Code.

Condition I Leakage in customer premises - Part H1 of the Operational Terms within the Wholesale-Retail Code sets out the process for applying for an allowance following a leak. Condition I provides the obligation for an Appointee to make an allowance in the event of a leak. As above, we think it will be easier for retailers if as many obligations are incorporated within the Code rather than partially within the Code and partially within conditions of Appointment. Therefore we suggest that the Code incorporate the relevant details currently within Condition I and Condition I be amended so that it is only applicable to household customers.

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.

F6 Arm's length trading – We support the requirement for arm's length trading.

F6 A2A Certificate of Adequacy – We support the requirement for a separate certificate for the non-household retail part of a business when there has been no retail exit. As a principle to ensure a level playing field, the requirements for companies who choose to exit business retail and those that do not should be the same.

R1-3 Access code for WSL – We agree that the new market framework replaces the need for access codes to cover non-household retail. It's not clear what a 'transition scheme' for combined supplies looks like therefore we would wish to see the obligation to produce an access code for combined supplies retained.

R5.1 Removal of in-area trading ban – We support the removal of the in-area trading ban as soon as possible. We accept the retention of requiring arm's length transactions.

R5.3 Relationship with licensees – We agree with the proposal to remove the obligation on an Appointee to inform Ofwat if its relationship to a related licensed water supplier changes.

R7-9 Information sharing with WSL – These should be amended to exclude the elements already addressed within the Code.

S Customer Transfer Protocol (CTP) – We agree that the CTP is no longer required for retail switches however, in the absence of an alternative it will need to be retained for any combined supply switches.

N Licence fees – For there to be a level playing field for all retailers (those who have chosen to retail exit, those who have not and new entrants) there should be a separate and transparent licence fee for non-exited non-household retailers.

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?

See our comments to question 6. In principle, the condition should be the same for those operating under an Appointment and those operating under a WSSL.

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?

To achieve a level playing field we support the principle of a licence condition which requires non-exited retailers to be bound by the provision of the codes and contracts in the same way as other retailers.

Q15 Do you consider that the proposals will achieve the objective of equivalence, with the same obligations and opportunities for all retailers? If not, what additional suggestions do you have?

The proposals should go some way to creating a level playing field, although we would wish to review the detailed drafting.

Q16 Do you have any other observations about our proposals on changes to the conditions for the Instruments of Appointment?

No, not at this stage.

Q17 Are there any areas not covered in the proposals in which you consider that changes are required?

We have not identified any further changes at this stage.

Q18 Are there any areas in your Appointment in which you think differences from the examples used will require detailed consideration in future work?

We have not identified any areas at this stage.

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?

Yes, these cover the main areas of competency required.

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?

Yes, in principle, completion of the market accession testing should be a prerequisite for gaining a licence.

The assurance processes set out in the market terms and CSD 0001 within MAP3 relate to activity after market opening. It is unclear what the arrangements and requirements will be for existing market participants to transition through the market accession processes ahead of market opening. We would be concerned if there was not sufficient time or resources available by the Market Operator to enable full and complete testing for multiple wholesalers and retailers all seeking to test at the same time. It would be a concern if this delayed receipt of a WSSL.

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?

We agree that the licence application should include a completed Certificate of Adequacy.

Q22 Do you have any comments about the coverage of wastewater in the licence application process and the role played by the Environment Agency?

In principle, it seems appropriate and sensible to include coverage of wastewater within the application process for a wastewater licence. Accordingly, the Environment Agency should have the opportunity to be involved in considering whether a licence should be granted. We would want to see the wording of the revised application guidance in order to make further comments.

Q23 Do you consider that the role of any sponsor should be maintained, limited or removed entirely? What are your reasons for this view?

We think that the role of a sponsor should be maintained because this provides Ofwat with an additional third party view on the applicant's ability to access finance and managerial resources required to fulfil its business plan. It is in everyone's interest to create a market which demonstrates credibility and confidence and discourages participation by players who are not financially and managerially robust.

Q24 Do you have any comments about the proposals to include coverage of customer facing systems in the managerial competency tests?

In principle, we support the inclusion of customer interactions and customer service within the assessment of managerial competence. We would want to see the wording of the revised application guidance in order to make further comments.

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?

Yes, we agree.

Q26 Do you agree with our proposed transition approach for current retail only WSL?

Yes, the proposals seem reasonable.

Q27 Do you agree with our proposed approach to transition current combined supply WSL?

Yes, the proposals seem reasonable.

Q28 Do you agree with our proposed approach for creating self-supply licences?

Yes, the approach seem reasonable.

Q29 Do you agree that there should be a new condition in current licences and Instruments of Appointment to underpin the required preparations?

No, we don't support a new condition for this purpose. By the time the new condition has been agreed we will have advanced sufficiently far through preparations leaving only a short period of time for such a condition to be relevant. Post April 2017 the condition becomes redundant and should be removed in any case. An alternative which will be just as effective is for the Open Water/MOSL Assurance Framework to create appropriate strong incentives/disincentives which ensure companies are ready for market opening. For example, the requirement for assurance statements to be provided by company boards.

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?

See our response to Question 29.

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 comments/concerns you would make?

No.

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?

Its not particularly clear how an auction style allocation process would work in practice. Our concern would be if the customer was left without a retailer for a period of time because of the time necessary to implement and complete an auction.

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.

No.

Q34 Do you have any suggestions about the best approach for companies operating wholly or mainly in Wales?

No.

Q35 Do you have any comments about the circumstances in which a retail supplier should be able to opt out of the Supplier of First Resort arrangements?

No.

Q36 Do you agree with our proposed approach for the developer services market and the related process proposed within MAP3?

We agree that developers should be able to seek new connections either via retailers or directly with wholesalers as they choose. We hope that developers will review the proposals themselves and offer comments and views on whether the approach will deliver their requirements.

Q37 Do you agree with our assessment of the interactions between the various parties?

Its not clear whether 'other third party' includes an associate retailer which has exited the market? We understand that an associate retailer would be able to liaise with the wholesaler to provide connections for non-households on behalf of the developer.

Q38 Do you agree with the principle that Special Agreements should be contestable and the current thinking on the details of the approach outlined in section 9.2.5?

Yes we support the principle that Special Agreements should be contestable. We also support continuing the Special Agreement register in its current form with the addition of the wholesale charge and the percentage by which the wholesale charge differs from the standard wholesale charge.

With respect to the proposals, our concern would be if an undertaker who has not exited the market varies the charge for the service provided but does not publish the details, or does not publish the details within a reasonable period of time. An alternative could be for Ofwat to publish these arrangements albeit within a separate section of the Special Agreement register.

Q39 Do you agree with the principle that there should be early publication of wholesale charges and the current thinking on the details of the approach outlined in section 9.3?

We would like to see the publication of wholesale charges as early as possible to provide retailers with sufficient time to develop their retail charges. We also support a consistent approach in the use of projecting RPI. However, the published indicative wholesale charges need to be meaningful to be of any real value to retailers. Therefore, the timescale should be sufficient to enable wholesalers to publish reasonably accurate indicative wholesale charges such that only the RPI differs from the actual published wholesale charges.

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.

Yes, we agree. In addition, wholesalers need to publish charges schemes which set out simply and clearly how wholesale charges are calculated.

We note in section 9.5 that Open Water had requested guidance from Ofwat on a number of charging issues including vacant premises, disconnection for non-payment, unmetered properties, backdating of charges and minimum frequency of meter reading. This was because the industry had attempted to resolve these issues but unfortunately a consensus could not be agreed. Therefore, it is disappointing that Ofwat intends to pass these issues back to the Interim Code Panel to consider rather than providing guidance as requested.

Q41 Do you agree with our proposed approach to implement these licence changes? If not, how should we go about making these changes?

Yes, it would be preferable to reach agreement on the proposed licence changes rather than having to use the statutory route to implement the modifications.