

Consultation on licensing and policy issues in relation to the opening of the non-household retail market

Introduction and general comments

This is Bournemouth Water's response to Ofwat's consultation on licensing and policy issues in relation to non-household retail market opening.

Any proposals and subsequent decisions should facilitate an effective market and changes to licenses should not potentially compromise this at a later date. Prescriptive licence amendments now could create a risk that this may occur. Flexibility can be achieved by aligning licences to Market Codes and making the Codes the primary reference documents.

We do not have any comment on the proposed legal drafting however we understand that specific workshops to discuss the legal drafting with legal specialists will be held during the summer and we support this as an essential element of the process.

We agree that Special Agreements should be contestable but disagree that all 'non-price special agreements' should be recorded on the Special Agreement Register. We provide more information in our response to question 38.

It should be noted that the short consultation period combined with limited resource availability has meant that we have not been able to fully consider the questions posed. Our views are therefore high level and indicative therefore we would be pleased to discuss any particular areas in more detail should the situation arise.

To conclude, we are, in principle, broadly supportive of the proposals. We respond to the specific consultation questions below.

Consultation questions

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?

We are not clear on the exact proposal as the text in section 4.1 seems to a single licence with common standard conditions, whereas the question refers to separate licences. In fact we support a single licence with modular sections for water and wastewater.

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

Yes.

Q3: Do you think any of the proposed amendments listed in Table 2 are non-routine and require additional discussion? If so, why?

No further discussion is required, they are acceptable.

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

Yes.

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

Yes.

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

We do not have any comment, however we understand that specific workshops to discuss the legal drafting with legal specialists will be held during the summer and we support this as an essential element of the process.

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

Yes, as it creates a level playing field for all retailers.

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

To promote the level playing field we note and support the removal of the in-area trading ban as soon as possible.

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

No.

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

No.

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: we agree.

Condition G: we agree.

Condition I: we share Ofwat's concerns that Part H of the Wholesale Retail Code deals with general leakage allowances therefore we support further amendments in the Code (rather than Appointment conditions) to ensure customer protection. This must also consider that customers should be incentivised to efficiently use water and maintain their own pipes and infrastructure to avoid water wastage.

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: we agree.

F6A2A: we agree.

R1-3: we agree.

R5.1: we agree.

R5.3: we agree.

R7-9: we agree.

S: we agree.

Condition N: we agree that it would be helpful to have visible equivalence across all NHH retailers. We assume that to avoid the double counting of the retail NHH element of the fees undertakers are already paying that the element for non-exited NHH retailers would be deducted from the current licence fee and rendered separately.

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?

Yes, we agree.

We see no reason why the two should differ.

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?

We agree with the principle behind the 'stapling condition'.

We have not compared the 'stapling condition' with Schedule 8 of the MAC therefore cannot comment on the second part of the question.

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?

Yes, we consider that the proposals will achieve the objective.

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

No.

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

We have not considered the consultation to this extent, therefore have no comment.

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 considered the consultation to this extent, therefore cannot comment.

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 are fundamental.

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?

We agree with the proposal that granting a licence should be conditional on the successful completion of the MO's market assurance tests. We agree that a defined timescale is also appropriate to ensure that the relevant competencies are retained.

We have no suggestions for simplifying the process.

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?

A Certificate of Adequacy makes sense to ensure that customers will be protected and therefore we support its inclusion.

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

No.

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

While the principle is sound, if in reality it does not offer any guarantees or protection against a licensee failing we query the efficacy of the role of a sponsor in the current form. We suggest that the sponsorship role should therefore be either strengthened or removed completely.

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

For the interests of customers and the market it is fair that there should be a proportionate requirement for new entrants to demonstrate competence. We support the proposal.

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?

We agree that the Certificate of Adequacy is the appropriate vehicle for providing assurance. To protect customers the definition of 'material' should be clear.

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

Yes, we agree.

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

The proposed approach appears reasonable.

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

We agree that a degree of detail is inevitable but observe that the level proposed in the consultation may discourage take up of the option.

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

In view of the extremely tight timeline we acknowledge that to ensure sector readiness strong incentives are needed, but question the inclusion of them in licences and Instruments of Appointment when these will need to be removed after market opening. Alternative options introducing these incentives should be considered.

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?

At this point in the market opening timetable specific information and activity requirements will be helpful to avoid ambiguity and the misinterpretation of the actions needed. Without this specificity the risk of a participant or participants not being ready will increase.

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. We have not considered this issue any further than our response to questions 29 and 30.

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?

We query whether an auction process could introduce the risk of cherry picking and leave some customers less well protected, unless the auction requires that all customers are acquired by a single retailer. If this is the case then we agree that auction style allocation process could work.

If customers are at risk of cherry picking then we support the interim (supplier of last resort) process.

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.

We have no suggestions.

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 Supplier of First Resort ('SoFR') arrangements?

We have no comment ahead of the publication of the proposed exit regulations.

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

Yes.

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

Yes.

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?

We agree that Special Agreements should be contestable.

We do not agree with the proposal to include all 'non-price Special Agreements' in the Special Agreement Register (SAR). We agree that very customer-specific information such as the water quality example given on page 73 should be recorded, but 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. Good account management should be a pre-requisite for any retailer (incumbent or not) wishing to retain their customers, therefore whether a customer currently receives an account management service is not relevant to future retail activities. In addition as details of whether data loggers are installed will be recorded within the Market Operator System, also including the information in the SAR will be duplication.

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?

In principle it will be possible to produce indicative prices in July, but this will introduce greater uncertainty in relation to forecast volume assumptions and in turn potentially greater tariff variability over time. Therefore RPI is potentially not the only driver for revision of the tariffs. Expectations surrounding the degree of revision needed therefore to take this volume risk in to consideration. This could be by way of wholesalers confirming in the interim (say October) whether the indicative charges remain appropriate (notwithstanding the RPI changes), and if deemed to require amendment providing a fully justified case for change to Ofwat.

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.

We agree in principle with the proposal but the constraints of the change control process should be examined on a periodic basis to ensure that they work in the best interests of customers.

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

Yes. We support the pragmatic approach.

Summary

To summarise:

- We broadly support the proposed approach.
- To ensure flexibility we support the alignment of licences with market codes, rather than the introduction of licence conditions that could become constrictive.
- The in-area trading ban should be removed as soon as possible.
- Only specific non-price special agreements should be recorded in the Special Agreement Register.

*Bournemouth Water
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