

Retail Licencing
Ofwat
21 Bloomsbury Street
London
WC1B 3HF

20 July 2015

Dear Sir or Madam,

Licensing and policy issues in relation to the opening of the non-household market – a consultation

Thank you for the opportunity to respond to the above consultation. Yorkshire Water concurs with the need to amend licences to facilitate non-household retail competition enabled under the Water Act 2014, and the intent of the proposals described.

We note that this consultation aims to progress the proposals for changes that are required to licences and appointments, and trust that you will find our responses useful at this stage. Our vision is 'taking responsibility for the water environment for good'. Taken together with Ofwat's mission to secure 'trust in water', we have an absolute duty to ensure that the implementation of retail competition for non-household customers is a success.

We endorse Ofwat's MAC principles set out in the consultation. In consideration of the proposed licence changes described to enable the new market to operate, we consider that the principles of primary importance which should be maintained when concluding the changes to enact are:

- Licences should be equivalent and non-discriminatory to enable a level playing field (to the extent that regulatory burden is appropriate and proportionate). This is relevant for all retail service providers' licences, as well as wholesale suppliers' licences. Additionally water and sewerage licences should mirror each other wherever possible in structure and content.
- Licence changes to enable non-household retail competition must not prejudice or in any way pre-empt the investigation or development of upstream markets.
- Licences should be simple, enduring and not duplicate requirements defined and secured elsewhere, e.g. in legislation.

We enclose our response comments to the specific questions in an attachment to this letter. We have sought to only make material comment where we feel there is an omission, a requirement for clarification or amendments are necessary.

We look forward to the next stage of licence amendment process when we anticipate we will be able to analyse the proposed changes specific to our licence in detail.

Yours sincerely,

A handwritten signature in cursive script that reads "Adrian Kennedy". The signature is written in a dark ink and is positioned above the printed name and title.

Adrian Kennedy
Director of Regulation

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Number	Question	
1	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. Water and Sewerage licences should mirror each other and be as closely aligned to appointees licence as possible.
2	Do you agree with the proposed amendments to standard conditions for the new water supply and sewerage service licence (WSSL)?	We agree with the majority of the amendments. However, in A3, paragraph 5, given the heading “Emergencies and Unplanned Events ”, we believe section (1)(b) should read “instructions given to it by a relevant water undertaker during any emergency or unplanned event (save any which are manifestly unreasonable);” It would allow wholesalers to issue instructions in scenarios which fall short of being legitimately categorised as an emergency, yet which are serious enough to require prompt action to protect the customer and/or the environment.
3	Do you think any of the proposed amendments listed in Table 3 (Table 2) are non-routine and require additional discussion? If so, why?	The amendments listed in Table 2 and further expanded in table A1 in the appendices appear to be logical from our understanding of the intended effects. At this stage, we are not in a position to conclude whether the proposed amendments are routine or non-routine until the legal drafting of the proposed WSSL standard condition have been examined.
4	Do you agree with the proposed approach to maintaining customer protection in the future WSSL?	Yes, in entering the new market and the potential volatility that might ensue, we believe customer protection is paramount. We therefore agree with the proposed approach to maintain customer protection in the future WSSL, at least in the near to midterm while the market becomes established. Once competition is seen to be functioning effectively, this may be a barrier to entry that is no longer required, so it is suggested that this requirement is kept under review. We consider that there should be a requirement within the certificate of adequacy to confirm that the provider has maintained services without detriment and as well as having the capacity to continue doing so. This provides parallel customer protection to the current Risk and Compliance Statements. Certificates of Adequacy may need to remain confidential if they have

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		the potential to reveal commercially sensitive information (i.e. plans to merge / take-over customer groups served by other retailers).
5	Do you agree with the proposed approach to Market Arrangements Code enablement?	Clarity is required with regard to who is the ultimate owner of the MAC (responsibility for maintaining and holding the official copy etc.) and where reference is made about who discharges the MAC - i.e. the MO. The licences of Licensees and Appointees' should retain the flexibility for the MO provider to change, without need to change their licences. We feel that we cannot comment fully without sight of the licence for the Market operator
6	Do you have any specific comments on the legal drafting?	It is necessary to understand exactly how the existence of the Market Operator will be given effect and how the MO becomes a party to the MAC in order to comment further.
7	Do you agree with the proposed approach to include requirements on arm's length transactions and non-discrimination?	This appears to repeat obligations placed on the Licensees under competition law, and as such is questionable as to whether it is required within the licence, given that the law provides adequate protection. We think it is preferable for licences to remain as simple as possible and to avoid any repetition/possible conflict with legislation. As such, we would question the reasoning behind including this in the licence. We do acknowledge it may provide increased confidence for those companies not linked to an undertaker.
8	Do you have any other comments on our proposed conditions in this area?	No
9	Do you have any other observations about our proposals on changes to the standard conditions for the new Water Supply Licence?	Part A, sections 5 and 6 should be reviewed to ensure fitness for purpose for the wastewater licence, or moved to parts B/C/D where the detail for the specific service can be related appropriately. For example, trade effluent incidents and notifications should be considered in emergency or significant incident situations (impact on public health / risk of death), as well as in regard to provision of information aligned to A6(6)a. Section A6(1e) should extend to comply with / provide info to or work with Environmental Health depts., (who have duties for both drinking water and sewerage issues), or other environmental bodies such as Canals & Rivers Trust (receiving body for some waste water discharges).

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10	Are there any areas not covered in the proposals in which you consider changes are required?	The sewerage licence needs specific consideration, which is not apparent in the current drafting.
11	Do you agree with our proposals for the conditions within Table 4. Please respond separately on each of the three Appointment conditions (Q, G and I) discussed.	Yes, we agree this provides further clarity for licensees. Condition Q: we have no issues with the proposal Condition G: we agree that the Operational Terms need to include provisions to ensure customers are made aware of CCWater and WATRS, presumably the retailer must do this. We recommend the terms are not prescriptive on how this is done Condition I: The WRC appears weak in comparison to the condition. Consideration should be given as to whether the WRC should refer to a code of practice with some minimum standards.
12	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.	Yes we agree. Generally conditions should promote equivalence but should not be disproportionately onerous.
13	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?	1.2 should just refer to the MAC Principles in the MAC. They should not be repeated in this condition. This would avoid the requirement to change to the licence If for any reason the principles were to change.
14	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?	Any provider of wholesale services needs an equivalent condition to ensure it interacts with the market in accordance with the WRC (similar to the MAC condition). The above could be secured by making this the WRC condition and adding an obligation to use the WRC. Condition 1.3.1 wrt non-exiting arrangements is unnecessary as it appears to prescribe that Appointees must separate wholesale and retail businesses contrary to Defra’s current exit options which allow companies to remain integrated. Items 1.3.2 and 1.3.3 are reasonable but impose regulatory burden and could be encompassed within an annual statement of compliance such as the current Risk and Compliance statement. Precedence with schedule 8 should be defined and made clear.

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15	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?	For the reasons stated above, we do not believe the proposals achieve the objective of equivalence as Competition law does this. The proposals may help bring clarity to all parties as to what is expected of them and in this sense they can be of value. But in the absence of any of the proposals stated above, a new entrant retailer could still expect the same treatment from a wholesaler without relying upon licence obligations.
16	Do you have any other observations about our proposals on changes to the conditions for the Instruments of Appointment?	No.
17	Are there any areas not covered in the proposals in which you consider that changes are required?	No.
18	Are there any areas in your Appointment in which you think differences from the examples used will require detailed consideration in future work?	Given the detail we have at this stage, we have no objection to changes proposed in respect of: F6, R5.1, R5.3, R7-9, and S We will review this again once the proposed change in wording is available.
19	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
20	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. We recommend that changes are consistent with MAP3 wherever possible to avoid unnecessary change at this stage. Simplify processes in the future, through the Interim Code Panel.
21	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?	This appears to be duplicating the process of market entry assurance. We suggest that the first certificate of adequacy as part of the entry assurance process.
22	Do you have any comments about the coverage of wastewater in the licence application process and the role played by the Environment Agency?	Consideration should be given to the inclusion of other stakeholders such as Environmental Health, the Canals and Rivers Trust etc.
23	Do you consider that the role of any sponsor should be maintained, limited or removed entirely? What are your reasons for this view?	We agree that if there is to be a role for the sponsor it needs to be meaningful and have repercussions if a sponsor has failed to have made

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		necessary inquiry into the WSSL. However, given the other protections built in to the market aimed at protecting customers and wholesalers (Certificates of Adequacy; process for rapidly appointing a new retailer on insolvency; Ofwat’s application process for a licence; wholesaler carrying no bad debt risk), We question the value of having the role of sponsor. It seems to fall short of requiring a parent company guarantee or a performance bond (which would really require a sponsor to verify the WSSL), so the level of comfort it offers, in the circumstances of a WSSL exiting the market or becoming insolvent, may prove to be illusory.
24	Do you have any comments about the proposals to include coverage of customer facing systems in the managerial competency tests?	Applicants should be in a position to demonstrate their ability to deliver acceptable levels of customer service to ensure the reputation of the industry for good service is not put at risk. Requirements should be outcome driven, not prescriptive.
25	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 with a single approach to adequacy. However, please refer to our response to Q 21.
26	Do you agree with our proposed transition approach for current retail only WSL?	The process should be as simple as possible, whilst involving the appropriate degree of rigour to ensure customer and market participant interests are protected.
27	Do you agree with our proposed approach to transition current combined supply WSL?	This seems to be a workable approach, however please note our comments regarding upstream and equivalence.
28	Do you agree with our proposed approach for creating self-supply licences?	We have concerns about the concept of self-supply in relation to disconnections, meter readings and the costs of interfacing.
29	Do you agree that there should be a new condition in current licences and Instruments of Appointment to underpin the required preparations?	We believe reputation will be the single biggest incentive/driver for ensuring market readiness. A general condition in the licence which obligates readiness is appropriate; however it should be time limited. The sanctions which would be enabled by such a clause in the event of say; an unintended breach, and the message that application of the sanctions would send should be considered by Ofwat.
30	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?	We believe a general obligation would be appropriate. Specific requirements should be incorporated in the MAP documentation, rather

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		than the licence. If specifics were to be incorporated in the licence, they should be time limited.
31	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?	It would be helpful to understand the planned sequence of enabling parts of the codes. This may be better specified outside of the licence such that changes to dates or sequence can be applied without the need to amend the licence. Given that there remains uncertainty in several areas, it is not possible at this stage to be conclusive in our comments on the proposed licence modifications.
32	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?	This seems to be an appropriate approach. We do however require to understand the mechanics of how this would work before we comment further.
33	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 are supportive of the development of parallel proportionate arrangements for smaller companies, subject to these arrangements being in accordance with the MAC principles, being documented and incorporated in the MAC/WRC as appropriate, and ensuring all parties are appropriately protected. The CoA for such companies would need to be assessed against such alternative arrangements in the codes. We would wish to comment further when such arrangements have been proposed.
34	Do you have any suggestions about the best approach for companies operating wholly or mainly in Wales?	We would suggest that the licences of companies operating wholly or mainly in Wales are amended (as far as allowable by legislation) to be consistent with the new WSSLs in England. We would also suggest that eligible premises in Wales are registered in the central market systems and settled and switched in accordance (in a proportionate sense) with the Market Codes.
35	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?	Any Licensee with a substantial portfolio of customers should be obliged to be a SoFR in the area(s) within which the Licensee holds an appropriate authorisation. Licensees with a number of SPIDs or wholesale charge below a given threshold should be able to opt in or out on an all-in or all-out basis in that area. We do not believe it is in the interest of the market or the customer to allow segmentation, as the

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		<p>rules and processes would inevitably become over complex in time. Retailers below the threshold who opt-in should be required to justify in their CoA their capability to take a significant volume of customers resulting from another existing Licensee ceasing to operate in the market.</p>
36	<p>Do you agree with our proposed approach for the developer services market and the related process proposed within MAP3?</p>	<p>No - specifically related to sewerage process.</p> <p>The proposed process does not take into account the requirements of the WIA 1991, and the differences between water and sewerage legislation. A1 - pre application enquiries in relation to a new connection - is not required if the right of connection has been established. A3 - new connection with wholesaler’s sewerage system – there is no requirement to carry out a pre enquiry or a development impact assessment under S106 WIA. The process appears to be forcing sewer connections down a clean water process but the legislation differs.</p> <p>We agree that there should be a defined SLA but the process of adding a retailer into the process will increase timescales in the majority of instances. Consideration should be given to removing development of Developer Service functions from the Open Water programme and developing the appropriate processes via the Water UK Developer Services programme.</p> <p>The principles that the consultation states do appear to be sensible however the actual MAP documents/processes to not replicate the consultation approach.</p> <p>More clarity around the temporary building supply process is required as there are various definitions of a temporary building supply in the industry. Some of the process forms do not apply themselves to smooth administration of the transactions.</p> <p>We recommend a working group is set up to review the Retail</p>

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		<p>Competition approach to Developer Services. The MAP does not make clear which Developer Services services are impacted e.g. diversion process this will lead to confusion.</p>
37	Do you agree with our assessment of the interactions between the various parties?	Please see above response to question 37.
38	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>We agree that Special Agreements should be contestable, to the extent they are based upon wholesale arrangements (i.e. if it is a wholesale arrangement, the wholesaler should be willing to provide this regardless of which retailer is serving the customer). We agree that finding an approach that consistently and fairly balances transparency in the market and commercial confidentiality is likely to be difficult to achieve. If we have understood the proposal for the SAR correctly, we believe publishing only the percentage discount may lead to more questions (e.g. on what basis is the discount justified etc.?).</p>
39	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?	<p>We agree with the principle of early publication. The details of the approach represent a significant change from the proposal in Appendix 8 of the Draft determination. Provision would be required to allow amendment of the charges if necessary to reflect material changes between early publication and application.</p>
40	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>Ideally Yes, but in practice No. As part of a transparent charges policy the wholesaler should charge using tariffs that are within the published charges scheme, however 'issues' will arise throughout the year that may need addressing before the publication of the next charges scheme for the following year. The ability to enable necessary changes to the charging scheme must be included, as must the ability to provide quotes for non-standard works.</p>
41	Do you agree with our proposed approach to implement these licence changes? If not, how should we go about making these changes?	<p>We are keen to contribute to the expedient progress of the required licence amendments and fully support the proposal to seek separate agreement from each undertaker under section 13 and section 17J.</p>