

Explanatory Note

This paper contains a Memorandum of Understanding between the Department for Environment, Food and Rural Affairs (Defra) and the Water Services Regulation Authority (Ofwat) and sets out the principles and values which underlie the relationship between the two parties.

This Memorandum is part of a series between each of the bodies who interact with the water industry; the Department for Environment, Food and Rural Affairs (Defra), the Welsh Assembly Government (WAG), the Drinking Water Inspectorate (DWI), the Water Services Regulation Authority (Ofwat) and the Environment Agency (EA). Each Memorandum in the series will be laid by the Secretary of State before Parliament.

The Memorandum is required under section 52(4) of the Water Act 2003 (the Water Act). The Water Act places a duty on the two parties to make arrangements with each other with a view to promoting:

- (a) co-operation and the exchange of information between each pair of them; and
- (b) the consistency of treatment of matters which affect both of them.

Introduction

1. This Memorandum of Understanding sets out the understanding of on the one hand the Department for Environment, Food and Rural Affairs (Defra), and on the other, the Water Services Regulation Authority (Ofwat) of the principles that will underlie relations between them.

2. This Memorandum is required by section 52(4) of the Water Act 2003, to secure effective working arrangements between the parties. The Memorandum is not intended to cover every detailed aspect of the relationship between the parties. Rather it is a statement of principles which will guide relations between them to ensure sufficient arrangements are in place to enable them to discharge their respective responsibilities effectively and to avoid duplication of effort.

3. This Memorandum is not legally binding. It will serve as a working document which will be subject to review in the light of operational practice.

4. Throughout this Memorandum Defra and Ofwat will be referred to collectively as 'we' and the expressions 'our' and 'us' will be used accordingly.

Review of Memoranda

5. This Memorandum may be amended at any time by agreement of both parties. In addition, this Memorandum will be reviewed at three yearly intervals and updated as necessary, in light of experience of its operation in practice.

Roles and Responsibilities

6. Defra sets the policy and regulatory framework for the sector in England¹ and ensures that it delivers the Government's objectives. This is then translated into legislation which sets out the responsibilities of the industry, regulators, the consumer representative and Government. Defra will ensure that Ofwat is kept informed of and where appropriate is consulted on decisions that affect the water and sewerage sector in England.

7. Ofwat is the independent economic regulator of the water and sewerage industry in England and Wales. Ofwat is responsible for economic regulation of the sector, acting independently of the industry, Government and other stakeholders, while working within the Government policy framework. Ofwat will ensure that Defra and other relevant contacts in the UK Government are informed of Ofwat's views on issues that affect policy on the water and sewerage sector. This is in the context of a regulatory framework that includes the Environment Agency and Natural England with responsibilities for the environment, the Drinking Water Inspectorate responsible for drinking water quality and the Consumer Council for Water representing the interests of consumers.

¹ For the purposes of this Memorandum "England" means water company areas that are not wholly or mainly in Wales.

8. In agreeing this Memorandum, Defra fully recognises the independence of Ofwat and Ofwat recognises the legitimate interest of Defra in the overall work of Ofwat.

9. Defra will from time to time issue Ofwat with statutory guidance on how it should contribute to the Government's social and environmental policies. Ofwat will have regard to this guidance when it carries out its functions as the economic regulator. Ofwat sets out in its annual report how it has contributed to the delivery of the policies set out in the guidance. Defra has made a commitment that the guidance will not be used to take forward new policies with significant financial implications for consumers or companies. Where this is the case, new legal provisions would be brought forward.

Working Relationship

10. We will seek to build on the good working relationship that already exists between us by:

- being open and constructive;
- working together at all levels, wherever appropriate;
- respecting each other's views, where different, ensuring proper understanding of the reasons for any such differences;
- having a "no surprises" policy, based on notifying each other in advance where there is a likelihood of significant announcements and developments in policy;
- highlighting areas of interaction and setting out what each expects of the other;
- minimising duplication of activity wherever possible; and
- informing stakeholders about our relationship so as to reduce regulatory uncertainty.

Treatment of Matters of Common Interest

11. We are committed to the principle of good communication with each other on areas of mutual interest to avoid surprises. This will be done through regular liaison and regular discussion on relevant issues. The intention is not to constrain the discretion of either party but to allow each to make representations to the other in sufficient time for those representations to be considered.

12. Against this background, and, subject to the Freedom of Information Act 2000 and Environmental Information Regulations, and other constraints (eg commercial confidentiality, price sensitive matters, etc) in confidence where necessary, we will:

(i) brief one another as soon as practicable on relevant developments within our respective areas of responsibility, whenever possible prior to public release or publication, subject to market sensitivity; and

(ii) give appropriate consideration to the others views and explain where we do not agree.

13. We will invite each other to formal press conferences and other public events hosted by one, but of interest to both.

14. Where appropriate, we will liaise, involve and keep each other informed as necessary on the drafting of key documents where relevant to the other party's functions.

Exchange of Information

15. We will aim to minimise the burden placed on undertakers and licensed water suppliers (companies) in providing information to public authorities. We will aim to avoid duplication by sharing publication schedules and plans to collect information from companies. Where appropriate, we will consult each other before considering an approach to companies to determine whether the required information is already held in a suitable form by the other party.

16. Each party will provide information in its possession that may be reasonably requested by the other subject to necessary confidentiality constraints and safeguards and statutory bars on disclosure. We will, in line with Freedom of Information Act provisions on information provided in confidence, refer back to the originating party any requests for information we hold but did not collect and which we are aware is confidential in nature. Each party will make the other party aware of any significant disclosure it intends to make to a third party of any information it received from that other party.

Disputes

17. If there is a dispute about the interpretation and/or operation of the Memorandum which cannot be resolved between us at working level, the Director of Water at Defra and the Chief Executive of Ofwat will discuss the matter and decide what action to take.

Publication of Memoranda

18. The Secretary of State will lay this and any revised memoranda before Parliament. Defra will also forward this and any revised memoranda to other parties covered by section 52(4) of the Water Act, the Consumer Council for Water and Water UK.

19. An up to date version of this Memorandum will be published on Defra's website (www.defra.gov.uk) and on Ofwat's website (www.ofwat.gov.uk).

Hard copies will also be available on request from Defra on 020 7238 4818 and from Ofwat on 0121 625 1399.

Signed by:

[Martin Hurst]


..... for the Secretary of State

Date:

[Regina Finn]


.....for the Water Services Regulation
Authority

Date: 7/10/08

