



WATER ACT 2003
WATER SUPPLY LICENSING

Strategic supplies

Guidance

December 2005

Guidance on strategic supplies

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1. Introduction and outline

1.1 Background

The Water Industry Act 1991 (WIA91)¹ permits a company that is the holder of a water supply licence (referred to in this guidance as a licensee) to have access² to a water undertaker's³ supply system⁴ to enable the licensee to supply water to eligible premises. Prospective licensees will have to obtain a water supply licence before they can supply water through a water undertaker's supply system in competition with the water undertaker. Prospective suppliers can apply for either of the following:

- A **retail licence** -a water supply licence that authorises the holder to use a water undertaker's supply system for the purpose of supplying water to the premises of its customers ('the retail authorisation'). A retail licence therefore permits the supplier to purchase a wholesale supply of water from a water undertaker and to retail it to customers at eligible premises⁵.
- A **combined licence** -a water supply licence that gives the holder the 'supplementary authorisation' in addition to the retail authorisation. The supplementary authorisation allows the holder to introduce water into a water undertaker's supply system by means of which any particular supply of water to the premises under the licensee's retail authorisation is to take place⁶.

Water supply licences apply to the supply of potable and/or non-potable water.

Section 17A(3) WIA91 sets out the following three requirements that must be satisfied in relation to each of the premises supplied by a licensee:

- the customer's premises are not household premises⁷;
- when the licensee first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually by the licensee is not less than 50 megalitres (MI)⁸, (the 'threshold requirement')⁹; and
- the premises are not being supplied by another licensee.

¹ In this guidance, references to WIA91 refer to WIA91 as amended by Water Act 2003. The principal water supply licensing amendments have effect from 1 December 2005 (see the Water Act 2003 (Commencement No.5, Transitional Provisions and Savings) Order 2005 (SI 2005/2714 (C.109))).

² The term 'access' refers both to wholesale supplies of water by a water undertaker to a licensee for the purpose of the licensee's making a retail supply of water to the premises of the licensee's customer and to combined supplies (the introduction by the licensee of water into the water undertaker's supply system in order to make a retail supply of water by the licensee to its customer through the water undertaker's supply system).

³ A 'water undertaker' is a company appointed under section 6 WIA91 to provide water services in respect of a defined geographic area of England and Wales.

⁴ A water undertaker's supply system is defined in section 17B(5) WIA91.

⁵ See sections 17A(1), (2) and (4) WIA91.

⁶ See sections 17A(5) and (6) WIA91.

⁷ The definition of 'household premises' is set out in Section 17C WIA91.

⁸ 50 million litres, or 50,000 cubic metres (m³).

⁹ See section 17D WIA91.

1.2 Purpose of this guidance

This guidance is non-statutory. We have prepared it to set out the process we intend to follow for determining whether introductions should be designated as strategic supplies and subsequently whether such designations should be cancelled. It provides guidance on the factors we will consider when assessing whether an introduction constitutes a strategic supply and the process parties must follow when requesting a determination. Water undertakers, licensees or customers who are considering whether strategic supply designation would be appropriate may wish to use this guidance.

Sections 66G and 66H WIA91 allow us to determine whether one or more introductions of water into a water undertaker's supply system by a licensee under section 66B¹⁰ or 66C¹¹ WIA91 constitute a strategic supply or a collective strategic supply.

The trigger for whether an introduction of water can be designated as a strategic supply is contained in section 66G(10) WIA91. This provides that an introduction of water is strategic if, without the introduction being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers¹² as well as supplying the licensee's customers with water for domestic purposes. The trigger for whether two or more introductions of water can be designated as a strategic supply is contained in section 66H(10) WIA91. Section 66H(10) WIA91 is in substantially identical terms to section 66G(10) WIA91¹³.

We may make a determination if a water undertaker asks us to do so, or where we propose to make a determination that an introduction of water constitutes a strategic supply. We will also consider requests from customers and licensees.

If an introduction¹⁴ is designated as a strategic supply and it becomes inappropriate for the licensee to continue to operate as a result of its conduct or the licensee runs into financial difficulties, the licensee will be subject to the special administration procedure in sections 23-26 WIA91. This means that the introduction that had been designated as a strategic supply would continue to be made into the water undertaker's supply system.

¹⁰ Section 66B WIA91 (introduction of water into a water undertaker's supply system), applies where a licensee requests a water undertaker to permit it to introduce water into the water undertaker's supply system in connection with a supply to the licensee's customer's premises.

¹¹ Section 66C WIA91 (wholesale water supply by secondary water undertakers), applies where a licensee introduces a wholesale water supply by a secondary undertaker into a primary water undertaker's supply system in connection with a supply to the licensee's customer's premises situated in the primary undertaker's area. Section 66B and 66C WIA91 introductions and supplies are both referred to as combined supplies.

¹² Supplies to own customers' means supplies for both the domestic and non-domestic purposes of the water undertaker's own customers.

¹³ In this guidance references to strategic supplies include collective strategic supplies (with necessary modifications unless otherwise indicated).

¹⁴ Further references in this document to 'introduction' mean one or more introductions of water into a water undertaker's supply system.

To provide certainty in the market, prices agreed between licensees and water undertakers in access agreements will remain fixed for the duration of the access agreement, rather than changing in response to subsequent designations or cancellations of introductions as strategic. The water undertaker may offer a price dependent on a supply being designated. Please see our 'Access Code Guidance' (available on our website) for more details on pricing issues.

1.3 Structure of the guidance

The rest of this guidance is structured as follows.

- Chapter 2 outlines the policy intent of strategic supplies.
- Chapter 3 outlines the strategic supply designation and cancellation process.
- Chapter 4 briefly explains the terms used in this guidance.
- Appendix 1 is a flow chart showing the strategic supply designation and cancellation process.
- Appendix 2 a notice of application for the designation or cancellation of a strategic supply.

This document sets out our understanding of provisions of the WIA91 and of other regulations and orders. It is not a substitute for the WIA91 or the regulations and orders made under the WIA91, or for any other legal provision. This document should be read in conjunction with those legal instruments and any relevant case law. Anyone in doubt about how they may be affected by the WIA91 should seek legal advice.

2. Policy intent of strategic supplies

Water undertakers have statutory duties to supply water to existing and new customers, under certain conditions (see section 2.1 for more details). Strategic supply designation allows water undertakers to rely on the licensee's introduction when planning to meet those duties.

On a day-to-day basis, licensees and water undertakers will manage variations in the inputs from different sources of water according to the terms of their access agreements. Access agreements should include provision for what is to happen when a licensee introduces a significant amount of water into the public supply system and that introduction then fails. However, access agreements might not provide for what is to happen when it is inappropriate for the licensee to continue to operate as a result of its conduct or as a result of the licensee's financial difficulties rather than as a result of the unavailability of water (licensee failure rather than failure of the source). The strategic supply provisions have been included in the WIA91 to ensure that in such circumstances the licensee's introduction can be taken out of the licensee's control, and to ensure that the water continues to be introduced into the water undertaker's supply system.

We expect licensee failure to be rare and for it to be even rarer that a failing licensee would be introducing such a significant amount of water that a water undertaker would need immediate access to the licensee's introduction to keep supplies flowing.

The aim of strategic supply designation is to reduce the need for the water undertaker to duplicate resources if its customers switch to licensees. Without the strategic supply provisions, a water undertaker would have to make contingency plans to ensure it had enough 'spare' resources to match the volume of the licensee's introductions of water for domestic purposes, in case the licensee failed and its water resources became unavailable. That would be likely to be costly and would represent an inefficient use of resources.

2.1 Water undertakers' statutory supply duties

2.1.1 Interim supply duty

If a customer takes a supply of water from a licensee and either the licensee or the supply subsequently fails, then the 'interim supply duty' of the water undertaker applies, in accordance with section 63AC WIA91. The water undertaker will supply water to the licensee under certain conditions and is entitled to charge the customer for the water provided under its interim supply duty in accordance with section 143 WIA91.

The interim supply duty is not absolute. It does not apply where the provision of the supply would put at risk the water undertaker's ability to meet its existing supply obligations and its probable future obligations to supply water for domestic purposes or require unreasonable expenditure to do so¹⁵. Where this does apply the supply shall be made until a supply is made under section 52 or 55 WIA91 (see below) or

¹⁵ Section 63AC(5) WIA91.

the water undertaker serves notice of disconnection. Such a notice cannot be served within the first three months of the water supply being made.

2.1.2 Domestic supply duty

Water undertakers have a 'domestic supply duty', in accordance with section 52 WIA91. Under this 'duty' a water undertaker has a duty to provide to any premises a supply of water sufficient for domestic purposes (for example drinking, washing, cooking, central heating and sanitary purposes¹⁶). The water undertaker also has a duty to maintain the connection between the water undertaker's water main and the service pipe by which the supply is to be made to those premises.

Section 52 WIA91 does not oblige the water undertaker to provide a supply or maintain the connection with a trunk main used solely to supply water other than for domestic purposes; neither is it under a duty to provide a supply or maintain the connection between a water main and a service pipe during any period when it is reasonable for the supply to be cut off or reduced, or for the pipe to be disconnected, for the purposes of carrying out necessary works.

2.1.3 Non-domestic supply duty

Water undertakers also have a non-domestic supply duty under section 55 WIA91. Under this duty, a water undertaker is obliged to meet a customer's request for a non-domestic water supply, as long as two conditions are met:

- the water undertaker does not incur unreasonable expenditure in providing the supply; and
- the water undertaker does not put at risk its ability to meet all its existing obligations to supply water, together with its probable future supply obligations.

This duty does not apply if there is a contravention in relation to the water fittings used, or to be used, in connection with either the supply of water to the customer's premises, or the use of water in the premises¹⁷.

The water undertaker is not under a duty to provide a non-domestic supply or maintain a connection between a water main and a service pipe during any period when it is reasonable for the supply to be cut off or reduced, or for the pipe to be disconnected, for the purposes of carrying out necessary works¹⁸.

2.2 Non-statutory stand-by service

There is no statutory duty on the water undertaker to be a 'supplier of last resort'. However, in addition to their statutory duties to supply, water undertakers might offer a non-statutory 'stand-by' service to licensees or customers. They can make a charge for this service.

¹⁶ Section 218 (1) WIA91.

¹⁷ Section 55(4) WIA91.

¹⁸ Section 55(6) WIA91.

2.3 Effect of special administration

The primary consequence of designating an introduction by a licensee as a strategic supply is that a special administration order can be made in relation to that licensee (referred to as a 'qualifying licensee'¹⁹).

A special administration order, in relation to a qualifying licensee, is made by the High Court. It directs that, for the duration of the order, the affairs, business and property of the qualifying licensee will be managed by a person appointed by the High Court. This person is to make sure the purposes of the special administration order are achieved in a manner which protects the respective interests of the members and creditors of the qualifying licensee²⁰.

The purposes of a special administration order made in relation to a licensee are:

- the transfer to another company (or companies), as a going concern, of so much of the qualifying licensee's undertaking as it is necessary to transfer in order to ensure that activities relating to the introduction (or introductions) of water designated as a strategic supply may be properly carried on; and
- the carrying on of those activities pending the making of the transfer²¹.

The making of a special administration order has no effect on the validity of the qualifying licensee's agreements. Accordingly, access agreements and agreements between qualifying licensees and customers remain valid and fully effective.

Section 24 WIA91 sets out the situations in which either the Secretary of State (after consulting the Assembly) or we (with the consent of the Secretary of State after consulting the Assembly) can apply to the High Court for a special administration order in relation to a qualifying licensee. These include where a qualifying licensee:

- has been, or is likely to be, in a sufficiently serious contravention of a licence condition or a statutory requirement imposed on it in consequence of its licence as to make it inappropriate for the licensee to continue to hold its licence;
- has been, or is likely to be, in a sufficiently serious contravention of an enforcement order as to make it inappropriate for the licensee to continue to hold its licence;
- has taken action that has caused a water undertaker to contravene section 37 or section 94²² WIA91 (where applicable), and that action is serious enough to make it inappropriate for the licensee to continue to hold its licence or
- is, or is likely to be, unable to pay its debts.

¹⁹ For the purposes of the special administration regime, a licensee is a qualifying licensee if it holds a combined licence, and the introduction(s) of water permitted under sections 66B or 66C is designated is/are designated as strategic under: section 23(6) WIA91.

²⁰ Section 23(1) WIA91.

²¹ Section 23(2A) WIA91.

²² Section 37 WIA91: General duty to maintain water supply system. Section 94 WIA91: General duty to provide sewerage system.

A special administration order could be made in relation to a licensee introducing water into the primary water undertaker's supply system from its own source or bought wholesale from a secondary water undertaker. In the latter case, the secondary water undertaker would be required to continue to fulfil its agreement with the licensee (controlled by the special administrator) to supply water to the licensee for the purpose of introducing that water into the primary water undertaker's supply system. Special administration would not apply to the secondary water undertaker's assets.

The special administrator's remuneration and properly incurred expenses are charged on and are to be paid out of any property of the company in his custody or under his control at the time in priority to any security over that property²³. Those costs will either be paid for by ordinary business activities or out of the relevant sale proceeds. Ineligible customers should not therefore see any increase in their costs.

2.4 Assessing the risks

When considering whether an introduction is strategic, sections 66G(10) and 66H(10) WIA91 only allow us to consider the domestic and non-domestic needs of the water undertaker's own customers and the domestic needs of the customers of the combined licensee who is making the introduction. They do not allow us to consider the demands of customers of other licensees, including retail licensees. Defra is currently considering whether sections 66G and 66H be amended by way of a Regulatory Reform Order. We will revise this guidance as and when such changes are made.

If a customer requires a stand-by or back-up service this may affect the water undertakers' Water Resources Plans and might have implications for the access price. The water undertaker should price for any such non-statutory service transparently to show the customer and the licensee the value of this extra security.

Alternatively, it may be possible by way of a private law agreement for the water undertaker to obtain control of a failed licensee's water resources where the introduction of water by that licensee has not been designated as a strategic supply. In any event, the parties should seek their own legal advice as to the terms and effect of any such agreement.

²³ Section 19 Insolvency Act 1986, as applied by section 23 WIA91 and paragraph 1 of Schedule 3 to the WIA91.

3. The strategic supply designation process

3.1 Applying for a strategic supply designation

Sections 66G(3) and 66H(3) WIA91 allow the water undertaker to ask us to make a determination that an introduction constitutes a strategic supply. They also allow us to propose to make a determination, in the absence of a request from a water undertaker. For example, we may consider whether to make a determination if a licensee or customer asks us so to do.

We have the power to propose, of our own motion, to make a determination that an introduction of water constitutes a strategic supply. We might propose to consider whether a supply under section 66B or 66C WIA91 is strategic and make a determination without receiving an application for a designation. We might do this, for example, if a licensee provided evidence to suggest that a water undertaker was not taking advantage of the existence of a licensee's source and appeared to be acting inefficiently by investing in new resources.

A request for a determination can be made at any time. It is not necessary that the request is made when the licensee first introduces water into the water undertaker's supply system under a particular access agreement. If a water undertaker considers that it would be able to maintain supplies to its own customers and the domestic needs of the combined licensee's customers without that introduction being made, it does not need to request a designation. However, if the water undertaker's supply situation and resource availability changes, such that it considers that it would be unable to maintain supplies to its own customers as well as to the licensee's customers, it can then ask us to determine that the licensee's introduction constitutes a strategic supply.

When requesting the designation of an introduction as strategic, the applicant should set out the reasons why it considers that the proposed designation should be made. The information given should relate only to the introduction in respect of which the determination is sought, rather than all of the licensee's introductions.

A licensee's introduction would be classed as strategic in all circumstances where, in the event of the licensee's failure, the water undertaker would not be able immediately, and on a continuing basis, to supply its own current customers and the domestic needs of the licensee's customers. The information that we will require to test this will depend on the circumstances of the particular case. The following is a non-exhaustive list of the type of information we may need, depending on the case.

A designation request should be made in writing and include the following information.

Administrative

- The name of the water undertaker.
- The name of the licensee.
- The name of the secondary water undertaker (if applicable).

- A detailed explanation of why the introduction should be designated as strategic.
- The date from when the designation should apply.
- The expected duration of the designation, if known.
- Whether the parties to the relevant access agreement agree with the designation request.
- Whether the introduction is one of a set of introductions that should be designated as a collective strategic supply.
- Details of the introduction, including its input point and its source(s).
- Details about the water supply system the introduction serves and the associated water resource zone (WRZ).
- Details of the customers that may be affected if strategic supply designation is not granted, including numbers of customers, their locations, consumption and types of business. This information is to include sufficient details to enable us to consult them on the proposed designation.

Technical

- The volume of the licensee's introduction that is used for domestic purposes.
- The volume of the water undertaker's surplus in the WRZ where the licensee's introduction takes place (including average and peak where relevant).
- The volume introduced by the licensee relative to total demand in the WRZ.
- The total volume introduced by all water supply licensees relative to total demand in the WRZ.
- The location of the licensee's introduction relative to other water resources in the WRZ.
- The location of the licensee's introduction relative to the geographic pattern of demand in the WRZ.
- Seasonal supply pattern of the licensee's introduction.
- Seasonal demand pattern of the licensee's customers and other customers.
- The location of the licensee's customers and other customers within the WRZ.
- The volumes of domestic and non-domestic water use by the licensee's customers within the WRZ.
- The relative scarcity of water resources in the WRZ, in both physical and economic terms, with reference to the long run marginal cost (LRMC) figures for that WRZ.
- The security and reliability of the licensee's introduction and others in the WRZ for average and peak conditions.
- Any other water quality or operational matters that are considered to be relevant, which could include known future demand, distribution issues (including network constraints), dependence on a licensee's introduction to maintain quality or flow direction and whether there are any alternative options for supply in the WRZ.
- Any other information considered relevant to the particular case in question.

One of the key items of information the water undertaker will need to provide is data relating to the extent of the surplus in the relevant WRZ. This information will be central to the assessment of whether a water undertaker would have sufficient resources available to supply its own customers and the licensee's customers' domestic needs without the licensee's introduction being made. As water undertakers will need to consider the impact of licensees' introductions on their

Water Resource Management Plans, we have used the definition of available and target headroom prescribed by the Environment Agency for use in Water Resource Management Plans. When we consider applications for designation we will only look at introductions that are strategic. The methodology is explained in the Environment Agency's 'Water Resources Planning Guideline version 3.3' and 'Supplementary Guidance Note 5 - Calculating target headroom for final water resources plans' (December 2003).

In considering applications for designations we will include in our assessment of the available water any introductions from a licensee that are already designated strategic. This is because in the event of a licensee failure, water undertakers will have access only to those introductions. We will also take into account all the water undertaker's obligations and 'secure' sources. For example, if the water undertaker has an ongoing obligation to provide a bulk supply to another water undertaker, this will be taken into account as a demand. If the water undertaker is provided with a bulk supply by another water undertaker on an ongoing basis, this will be taken into account as a supply. If the water undertaker has an ongoing obligation to provide compensation releases from reservoirs, to maintain river flows/levels, we will take this into account as a demand. We will also take in account water that a water undertaker receives from private supplies, if supplied under long-term contracts.

3.2 What we will do on receipt of a request or if we propose to make a determination

Sections 66G(4) and 66H(4) WIA91 require us to give notice of the request by an water undertaker or a proposed determination by us to:

- the Secretary of State;
- the Assembly;
- the Environment Agency;
- all parties to the access agreement (i.e. the water undertaker, licensee and, where appropriate, the secondary water undertaker); and
- any other persons we think it appropriate to notify. This is likely to include affected customers of the licensee involved in the designation request, customers of retail licensees within the WRZ and the Consumer Council for Water (CCWater), subject to any security considerations.

There are no statutory provisions that specify the time within which we must give notice. However, we aim to issue a notice within 20 working days of receiving the request or proposing to make the determination. We will scrutinise the water undertaker's evidence and reasoning for requests for designations carefully to ensure that the request is serious and considered and that all the necessary information has been submitted before representations are invited.

The notice will state:

- the identity of the water undertaker who requested the designation (if appropriate);
- details of the water introduction under consideration;

- details of where to send representations/objections; and
- the date by which all representations/objections must be received, which will be not less than 28 days from the date on which notice was given.

3.3 Determinations of strategic supply designations

When making our determination, we will consider all representations or objections that are duly made and not withdrawn.

We will seek advice from those with expertise of water resource management in our decision-making process. This will include the Environment Agency, our staff and any independent experts we may wish to engage. We aim to make a determination within 20 working days of the closing date for representations. This may change depending on the degree of complexity of the application and the number of representations/objections received. We recognise that some applications may take longer to process where information is required from other parties. (For example we may ask the Environment Agency for its view on additional water within a WRZ by referring to its Catchment Abstraction Management Strategies for the relevant area, where published) or where we need to request additional information from the water undertaker. If we expect to be unable to make a decision within 20 working days, we will notify the parties and we will extend the period for upto a further 20 days. If all parties to the access agreement agree that the designation should be made, it is likely that a determination can be made sooner.

We will give notice of our determination, in writing, to all parties that received the initial notice of the designation request. Before issuing notice of our determination, we will invite comments on our proposals from the water undertaker and the licensee. We must maintain a register for certain purposes under section 195 WIA91. Under section 195(2)(g) WIA91 we must enter in the register the provisions of every strategic supply designation, unless the Secretary of State (after consultation with the Assembly) directs otherwise (for example, on grounds of security). We have been directed by the Secretary of State not to enter into the register any designation made under section 66G or 66H in relation to any licensed water supplier or any water undertaker. The publication of this information would be against the public interest in the current security climate.

Under section 37B WIA91 water undertakers have to review their water resources management plans annually. If this highlights any material change of circumstances, such as strategic supply designation, then the water undertaker should prepare a revised plan, after consulting us, the Environment Agency, the Secretary of State and any licensee. Water undertakers are under a similar obligation with respect to drought plans, the only difference being the timing of the review. The review is undertaken as soon as there has been a material change of circumstances and a revised plan must be subsequently issued.

3.4 Process for cancelling a strategic supply designation

If we determine that an introduction designated as strategic no longer constitutes a strategic supply we are required to cancel that designation²⁴. Water undertakers, licensees and customers can also apply to us for a designation to be cancelled if circumstances change²⁵.

It is unlikely that an introduction will remain strategic throughout the entire term of an access agreement, given the changing patterns of supply and demand within a WRZ. Water undertakers should review whether or not an introduction continues to be strategic during their normal water resource and business planning processes. We will monitor strategic supply designations to ensure the efficient and appropriate use of resources.

We expect that we would normally make a determination to cancel the designation following a request from a water undertaker, licensee or customer. A request that a designation be cancelled can be made at any time and must be made in writing. It should include.

- the name of the water undertaker;
- the name of the licensee;
- the name of the secondary water undertaker (if applicable);
- details of the strategic introduction including its input point and its source(s);
- whether the designation is a single or a collective designation;
- details about the water supply system the strategic introduction serves and the associated WRZ;
- a detailed explanation of why the designation as a strategic supply should be cancelled;
- the date from when the designation should be cancelled;
- whether the parties to the relevant access agreement agree with the cancellation request;
- details of the customers or other introductions that might be affected if strategic supply designation were cancelled; and
- information relevant to the criteria as listed in section 3.3 of this guidance that supports the application.

When dealing with cancellation requests, we propose to follow the same procedures and timings for issuing a notice as proposed in section 3.3 for designation requests. We would give notice of the cancellation request to the same people, giving the same information and would issue it within 20 days of receiving the request.

We also intend to follow the process and timings set out in section 3.3 in relation to determinations to cancel strategic supply designations. When determining whether to cancel a designation, we propose to use the same expertise in reaching our decisions, consult the same people and make a determination 20 working days after the closing date for representations. If both the water undertaker and licensee agree

²⁴ Sections 66G(7), 66H(7) WIA91.

²⁵ The legislation does not specify who can apply for a designation to be cancelled. We will consider application to cancel a designation from water undertakers, licensees and licensee's customers.

that the designation should be cancelled we may be able to make our determination in less time.

We will give notice of our determination in writing to all parties that received the initial notice of the cancellation request. Before issuing notice of our determination, we will discuss our proposals with the water undertaker and licensee.

4. Glossary of terms

There follows a brief description of some of the terms used in the strategic supplies guidance. Readers should refer to WIA91 or other relevant legislation, where appropriate for precise statutory meanings.

Abstraction: The removal of water from any source of supply (surface or groundwater), either permanently or temporarily.

Abstraction licence: The authorisation granted by the Environment Agency to allow the removal of water from a source.

Access: The wholesale supply of water by a water undertaker to a licensee for the purpose of making a retail supply of water to the premises of the licensee's customer; and the introduction of water by the licensee into a water undertaker's supply system for that purpose.

Access agreement: An agreement between a water undertaker and a licensee for access by a licensee to a water undertaker's supply system pursuant to the retail authorisation and/or supplementary authorisation.

Access code: A water undertaker's document that sets out all aspects of access to its supply system and the terms and conditions on which it will grant access to its supply system by a licensee. The access code comprises the standard terms and conditions common to all water undertakers and the terms and conditions specific to that water undertaker.

Access terms: The terms under which a water undertaker and a licensee agree access to a water undertaker's supply system.

ARROW costs: Expenses that can be **A**voided or **R**educed, or any amount that is **R**ecoverable in some **O**ther **W**ay (other than from other customers of the water undertaker) (see section 66E(3) WIA91).

The Assembly: The National Assembly for Wales.

The Authority: The Water Services Regulation Authority. The functions of the Director General of Water Services will transfer to the Authority on 1 April 2006.

Catchment Abstraction Management Strategies (CAMS): The Environment Agency launched the CAMS process in April 2001 for every catchment in England and Wales, in response to the Government's document Taking Water Responsibly in March 1999. CAMS provide a consistent and structured approach to local water resources management, recognising the reasonable needs of abstractors and the needs of the environment. CAMS enable the consideration of how much water can be abstracted from watercourses without damaging the environment. They will provide more local detail on the availability of water, and will allow a detailed assessment of where action may be needed to deal with problems of over abstraction.

Consumer Council for Water (CCWater): Represents the interests of water and sewerage customers in England and Wales. It replaced WaterVoice on 1 October 2005.

Charges scheme: Appointed water companies are normally required to publish this document under Condition D of their appointments. It sets out the company's charges for water and sewerage services and the terms and conditions of those charges. We approve most charges, including all standard charges.

Combined Licence: A retail licence with the supplementary authorisation, authorising the holder to introduce water into a water undertaker's supply system and to retail that water to a customer's eligible premises (section 17A(6) WIA91).

Combined supply: A supply made pursuant to a combined licence.

Conditions of appointment: Conditions imposed on water undertakers under section 11 WIA91.

Drought plan: Water companies are required to prepare a drought plan that details the actions it would take in the event of a drought to ensure the supply of wholesome water.

A drought plan sets out the range of drought situations that may occur, and indicates the range and sequence of actions a company would expect to take at different stages in a drought. Drought plans should help water companies to plan and progress any necessary action to meet their customers' demand for water.

Defined in WIA91 as 'a plan for how the water undertaker will continue, during a period of drought, to discharge its duties to supply adequate quantities of wholesome water, with as little recourse as reasonably possible to drought orders or drought permits'.

DWI: Drinking Water Inspectorate. It is responsible for regulating public water supplies in England and Wales. DWI is also responsible for assessing the quality of drinking water, taking enforcement action if standards are not being met, and appropriate action when water is unfit for human consumption.

Eligible premises: Section 17A(3) WIA91 sets out the following three requirements that must be satisfied in relation to each of the premises supplied by a licensee:

- the customer's premises are not household premises²⁶;
- when the licensee first enters into an undertaking with a customer to give the supply, the total quantity of water estimated to be supplied to the premises annually by the licensee is not less than 50 megalitres (MI)²⁷, (the 'threshold requirement')²⁸; and
- the premises are not being supplied by another licensee.

²⁶ The definition of 'household premises' is set out in Section 17C WIA91.

²⁷ 50 million litres, or 50,000 cubic metres (m³).

²⁸ See section 17D WIA91.

Environment Agency: Established under the Environment Act 1995 it has a statutory duty to protect and enhance the environment in England and Wales. It is responsible for water abstraction and water quality in rivers, lakes, reservoirs, estuaries and coastal waters.

Headroom: A buffer between supply and demand designed to cater for uncertainties.

It is the difference between water available for use and annual average demand (expressed as distribution input) at any given point in time.

Household premises: Premises in which, or any part of which, a person has his home and the principal use of the premises is as a home. This is defined in section 17C WIA91.

Interim supply duty: This term is defined in section 63AC WIA91.

Licensee: A company holding either a retail licence or a combined licence; also referred to as a licensed water supplier.

Long run marginal cost (LRMC): Marginal cost is the change in total costs per unit change in output. LRMC is estimated over the 'long term' (the time period which all costs are variable). It comprises changes in operating and capital costs.

Non-household premises: Premises where the principal use is not as a home.

Non-potable: Water which is not intended for domestic or food production purposes.

Potable: Water for domestic and food production purposes which is wholesome at the time of supply. This is defined in section 68 WIA91 and section 4 of the Water Supply (Water Quality) Regulations.

Primary water undertaker: For the purposes of section 66A WIA91 (wholesale water supply by primary water undertaker) and section 66C WIA91 (wholesale water supply by secondary water undertaker), a water undertaker is the primary water undertaker of a licensee if the water undertaker's supply system is to be used for the purposes of making the supply to the premises of the licensee's customer.

Private water supplies: Supplies made by means other than through a water undertaker's supply system or pipe network which are, as such, not regulated by us.

Retail authorisation: An authorisation to a company to use a water undertaker's supply system for the purpose of supplying water to the eligible premises of customers of the company (section 17A(2) WIA91).

Retail licence: A Water Supply Licence giving the holder the retail authorisation, entitling the holder to purchase wholesale a supply of water from the water undertaker and to supply it retail to a customer's eligible premises (section 17A(4) WIA91).

Secondary water undertaker: A water undertaker other than a licensee's primary water undertaker (section 66C(1)(a)(I) WIA91).

Sewerage undertaker: A company appointed under the WIA91 to provide sewerage services in respect of a geographic area of England and Wales.

Special administration: Section 24 WIA91 sets out the situations in which either the Secretary of State (after consulting the Assembly) or we (with the consent of the Secretary of State after consulting the Assembly) can apply to the High Court for a special administration order in relation to a qualifying licensee. These include where a qualifying licensee:

- has been, or is likely to be, in a sufficiently serious contravention of a licence condition or a statutory requirement imposed on it in consequence of its licence as to make it inappropriate for the licensee to continue to hold its licence;
- has been, or is likely to be, in a sufficiently serious contravention of an enforcement order as to make it inappropriate for the licensee to continue to hold its licence;
- has taken action that has caused a water undertaker to contravene section 37 or section 94²⁹ WIA91 (where applicable), and that action is serious enough to make it inappropriate for the licensee to continue to hold its licence or
- is, or is likely to be, unable to pay its debts.

Strategic supplies/collective strategic supplies: An introduction or introductions of water is a strategic or collective strategic supply if, without the introduction(s) being made, there is a substantial risk that the water undertaker would be unable to maintain supplies to its own customers and domestic supplies to the licensee's customers. The 'trigger' for whether a supply can be designated as strategic is contained in sections 66G(10) and 66H(10) of the WIA91.

Supplementary authorisation: An authorisation to a company to introduce water into a water undertaker's supply system for the purpose of making a retail supply of water to a customer.

Supply system: Any water mains or other pipes used for the purposes of conveying water from a water undertaker's treatment works to its customer's premises and any water mains and other pipes used to convey non-domestic water from any source to premises that are not connected directly or indirectly to any water mains or pipes connected to those treatment works. This term is defined in section 17B(5) WIA91.

Threshold requirement: The threshold relates to the amount of water supplied by a licensee using water undertakers' supply systems. The requirement is for the licensee to supply a minimum amount, defined by legislation.

²⁹ Section 37 WIA91: General duty to maintain water supply system. Section 94 WIA91: General duty to provide sewerage system.

Water Fittings Regulations: The Water Supply (Water Fittings) Regulations 1999. These Regulations replaced the Water Bylaws in England and Wales and are largely enforced by the water undertakers.

Water Resources Management Plan: A water undertaker's long-term strategic plan for water resource development in its area (see section 37A WIA91). The Environment Agency has a statutory responsibility for planning water resources. Its role is to ensure that there is enough water for people to use, and that this water is taken in a way that prevents long-term environmental damage. All water companies submit water resources plans as part of the price review process.

These are also known as Water Resources Plan and Water Resource Plan.

Water Supply Licence: A licence granted to a company giving it the retail authorisation, or both the retail authorisation and the supplementary authorisation.

Water undertaker: A company appointed under the WIA91 to provide water services to a defined geographic area and which owns the supply system and other infrastructure.

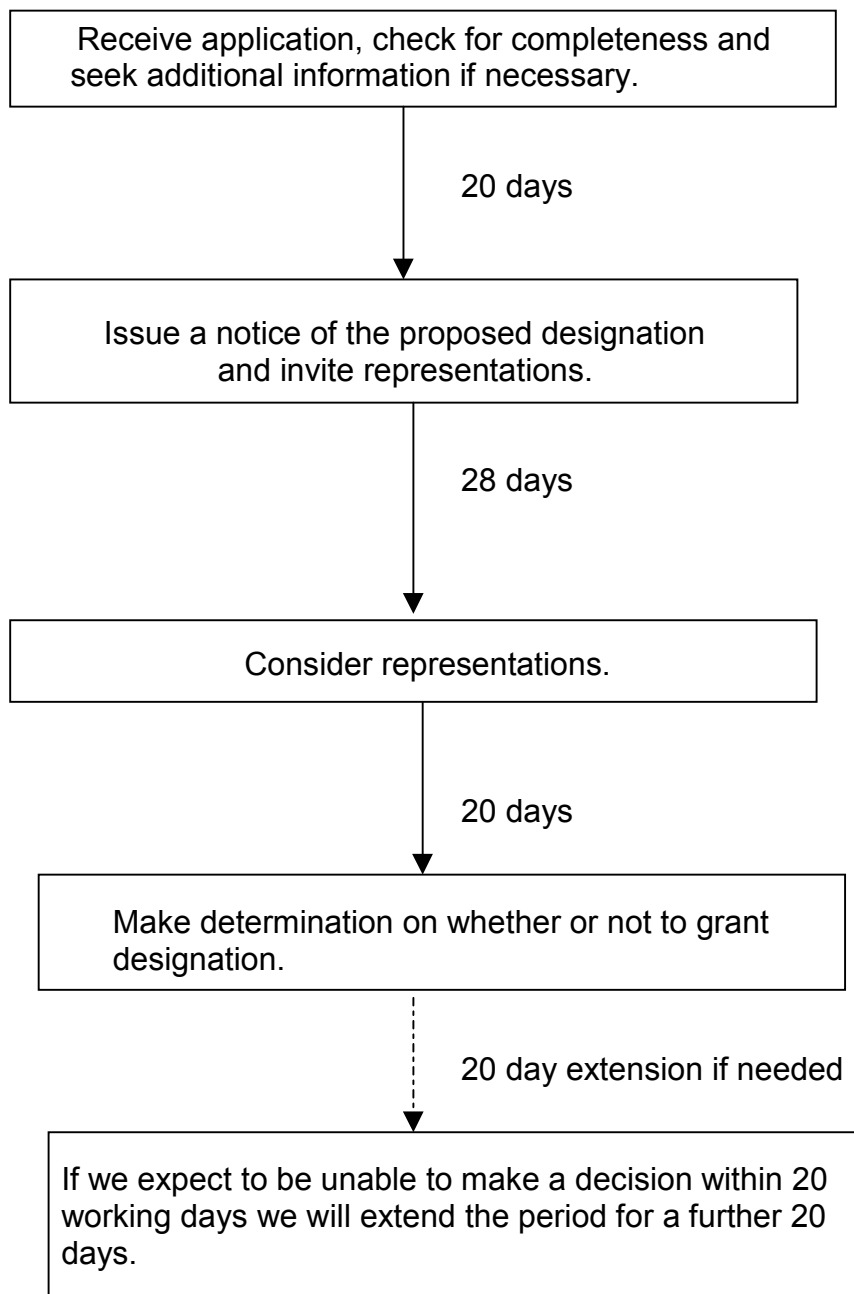
WIA91: The Water Industry Act 1991 (as amended by the Water Act 2003).

Wholesale supplies: Supply of water to a licensee by a water undertaker for the purposes of retail by the licensee to its customer's premises

WRZ: Water resource zone. The largest possible zone in which all water resources, including external transfers, can be shared. Hence, it is the zone in which all customers experience the same risk of supply failure from a shortfall.

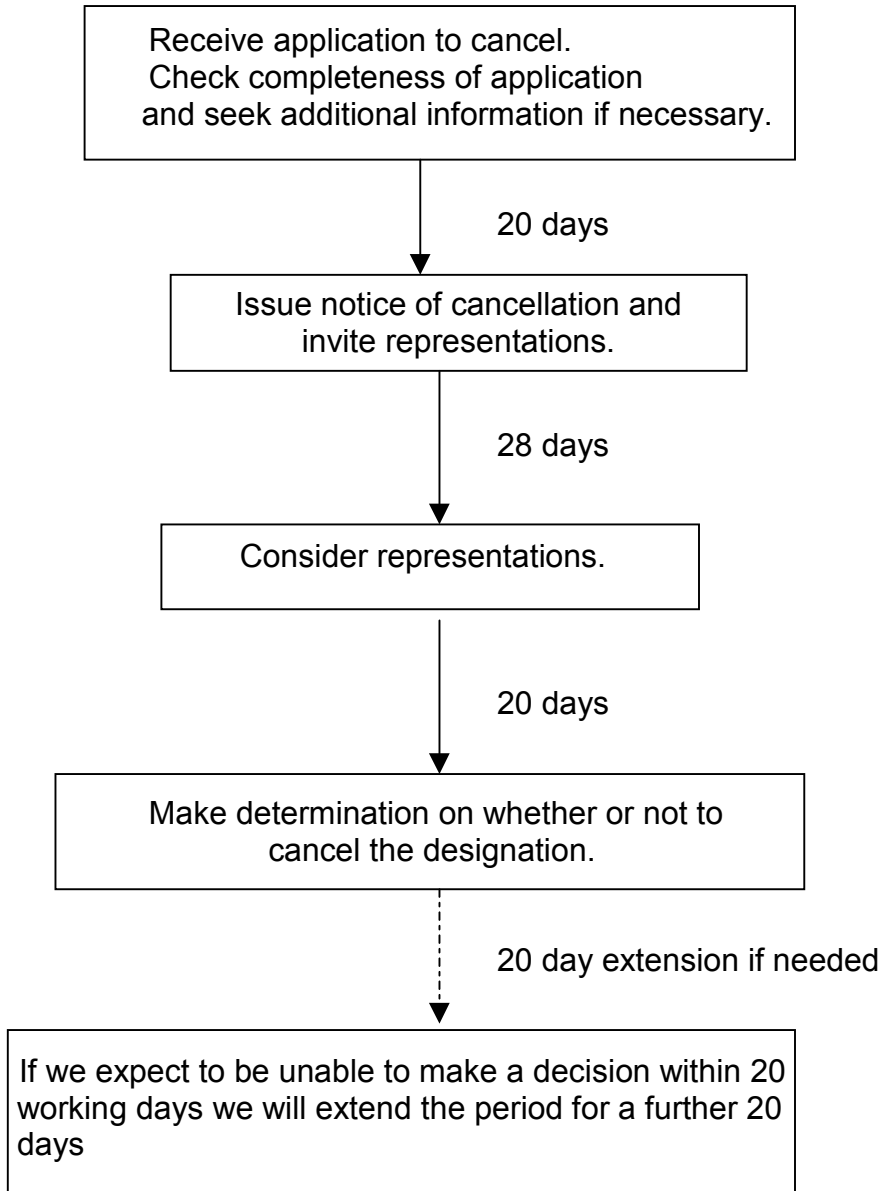
Appendix 1: Flow chart – application for a strategic supply designation or cancellation

Strategic supply designation process



If all parties to the access agreement agree that the designation should be made, it is likely that a determination can be made sooner.

Strategic supply cancellation process



If both the water undertaker and licensee agree that the designation should be cancelled we may be able to make our determination in less time.

Appendix 2: Notice of application for a strategic supply designation or cancellation

Notice of application for the [designation or cancellation] of a strategic supply under section [66(G)/66(H)] of the Water Industry Act 1991

[Company name] whose registered office is at [company address], gives notice that it has made an application to the Director General of Water Services (the Director) for the [designation or cancellation] of a supply by [Licensee name] to [name of customer – may not include in the light of security concerns] as strategic under section [66(G)/66(H)] of the Water Industry Act 1991.

OR

The Director General of Water Services (the Director) gives notice that he proposes [to designate or cancel the designation] a supply by [Licensee name] to [name of customer– may not include in the light of security concerns] as strategic under section [66(G)/66(H)] of the Water Industry Act 1991.

Any person who wishes to make representations or objections with respect to the application should do so in writing (which includes by e-mail) to: Ofwat, Centre City Tower, 7 Hill Street, Birmingham, B5 4UA or to [email address]. These must be received at Ofwat no later than [28 days from date of note]. Further information about how to make representations or objections, including information on the treatment of confidential information, can be obtained from Ofwat at the above address or from its website at www.Ofwat.gov.uk

Date: [.....]