

# Information notice

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## Ensuring consistency in our approach to resolving pricing disputes involving bulk supplies

In this information notice we confirm the framework we will use to make determinations to resolve pricing disputes involving bulk supplies.

A bulk supply is the supply of water or the provision of sewerage services from one appointed water and/or sewerage company to another company or to non-household customers that are large users. Companies can draw up a contract between them (a 'bulk supply agreement') that sets out the terms and conditions of a bulk supply, including the price.

Under the Water Industry Act 1991 (WIA91), if companies fail to reach agreement on a bulk supply, they can ask us to make a decision (a 'determination') on the price and other terms that should apply.

In '[Negotiating bulk supplies – a framework](#)', which we published in August 2013, we provided help to companies that would allow them to negotiate bulk supplies and – hopefully – avoid the need to refer disputes to us. And in '[Bulk supply pricing – a statement of our policy principles](#)', which we published in

February 2011, we set out the principles we use when making determinations on bulk supply agreements.

### Background

Our role is to protect customers' interests now and over the long term. Our tools to do this include powers under the WIA91 to determine the price and other contracted terms when there is a dispute – either between companies or between an individual company and one of its customers. Below is an overview of our powers to resolve bulk supply pricing disputes.

Resolving bulk supply pricing disputes is of strategic importance not just to the parties who raise the disputes with us, but also to the wider sector that we regulate.

By making decisions on individual cases we can set significant precedents that can send signals to all companies across the sector.

For example, new companies entering the market can purchase bulk supplies to supply retail water and sewerage services to

customers. Those new entrants provide a source of challenge to existing companies, driving efficiency, stimulating innovation and revealing the crucial information we need to make sustainable decisions. Our determinations on what a monopoly company can charge for the bulk supply will affect both:

- the revenue that the monopoly company can collect from all of its customers – and the charges that those customers pay; and
- whether potential new entrants decide to enter the market to supply business and other non-household customers. This, in turn, will affect the number of retailers that these customers can choose from and, ultimately, the benefits that competition between competing suppliers delivers to them.

We have a number of bulk supply pricing disputes that we are currently working on and we intend to begin to publish them in 2014.

However, the Water Bill 2013-14 will introduce changes that mean – subject to it being agreed by the

This is a formal document that alerts our stakeholders to a change in the way that we regulate the water and sewerage sectors in England and Wales.

## Overview of our powers to resolve bulk supply pricing disputes under the Water Industry Act 1991

Section	Description
s40 and s40A	Pricing disputes in relation to bulk supplies of water. This may involve: <ul style="list-style-type: none"> <li>• water trading between incumbent water companies;</li> <li>• a supply to a new entrant (commonly known as a new appointment and variation (NAV) that serves a new development; and</li> <li>• a supply to a NAV for onward supply to a large user.</li> </ul>
s56	Pricing disputes in relation to any terms, conditions or 'special agreements' between non-household customers and a supplier where the relevant supply is not covered by the supplier's charges scheme.
s66D	Pricing disputes in relation to supply to a water supply licensee.
s110 and s110A	Pricing disputes in relation to cross boundary sewers.  Pricing disputes with regard to new connections with public sewers. This may involve: <ul style="list-style-type: none"> <li>• sewerage trading between incumbent sewerage companies;</li> <li>• a discharge from a new development served by a new entrant; and</li> <li>• a discharge from a new entrant serving a large user.</li> </ul>

UK Parliament – that UK and Welsh Ministers can issue guidance on charging, and Ofwat can issue charging rules (having regard to this guidance) for charges imposed by companies – including bulk supplies, connection charges, and charges schemes.

This may mean that the charging terms – prices and associated terms and conditions – for the bulk supply disputes that we are currently considering may be set on a different basis to those that will be set for customers following the finalisation of the guidance and rules on charging.

Inconsistencies in our approach to charging for different customers have implications for not just the parties to the current pricing disputes we are considering, but for all customers. So it is important that the framework we use to

make determinations to resolve pricing disputes now is clear and consistent, but also flexible to future changes to the guidance and rules on charging.

### **Our framework for resolving bulk supply pricing disputes**

In August 2013 we published '[IN 13/08: Ensuring consistency in our approach to resolving pricing disputes](#)'. It set out the framework we proposed to use to make determinations to resolve pricing disputes. This included:

- our objective in making price determinations;
- the approach we will take for assessing costs to resolve pricing disputes now; and
- how we will minimise any potential inconsistencies with our potential future approach to charging.

We asked stakeholders to provide us with any comments on our approach to help us to improve our guidance. You can access a summary of the key comments from each stakeholder in '[Summary of comments received in response to 'IN 13/08: Ensuring consistency in our approach to resolving pricing disputes'](#)'.

We have considered the comments each stakeholder made carefully in developing our final framework. This is set out in '[Our framework for resolving pricing disputes involving bulk supplies](#)', which is available on our website.

### **Next steps**

Please note that our policies on bulk supply pricing disputes may need to evolve in future, in line with developments in legislation and market reform.

## Our framework at a glance

The framework relates to bulk supply pricing disputes only.

Our objectives in deciding disputes will be the relevant provisions of the WIA91 or our other general duties.

We will use a 'business-as-usual' approach for deciding bulk supply pricing disputes. This will usually involve us:

- looking at the costs related to the price being disputed;
- using the current price as a reference point for our determination; and
- setting charges based on average accounting costs.

We will only depart from a 'business-as-usual' approach if our testing shows this approach would cause material adverse effects. This includes competition or efficiency concerns.

We will include provisions in each determination that allow us to revisit it in future if necessary.

We will keep our policies under review, and consult stakeholders on any future changes.

## Enquiries

If you have any questions about this information notice or our bulk supply determinations please email [casemanagementoffice@ofwat.gsi.gov.uk](mailto:casemanagementoffice@ofwat.gsi.gov.uk).

## More information

'Our framework for resolving pricing disputes involving bulk supplies', January 2014

'Summary of comments received in response to 'IN 13/08: Ensuring consistency in our approach to resolving pricing disputes'', January 2014

'Negotiating bulk supplies – a framework', August 2013

'Bulk supply pricing – a statement of our policy principles', February 2011

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