

# **Application process for water and sewerage licences – retail market opening for non-household customers: draft guidance**

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## **1. Introduction**

### **1.1 Purpose of this guidance**

This guidance is designed to assist those applying for water supply licences and/or sewerage licences (collectively referred to as WSSLs and either one of them as a WSSL as the context requires) from April 2016. We will review and update this guidance, where necessary, to ensure that it remains fit for purpose once we have started receiving applications for WSSLs. For those wanting to find out more about the markets in England or Wales to decide whether or not to apply for a licence, please refer to the information published on our website and the following additional websites[ ] .

### **1.2 Context**

The Water Act 2014 will introduce a number of measures to reform the water sector in England and Wales. By April 2017, these reforms will result in retail market opening for non-household customers that:

- changes the current water supply licensing regime by removing the current thresholds applicable to English customers, allowing a larger number of non-household ('NHH') customers to choose who supplies them;
- introduces a sewerage licensing regime applicable to supply eligible English customers that will apply in parallel to the water supply licensing; and
- creates new regulation for the use of appointed companies supply systems and/or sewerage systems through the use of market codes.

Existing legislation already allows competition for the provision of retail services in water for the largest customers. Retail services include activities such as billing and customer services. Retailers buy wholesale services such as water supply and sewerage treatment from monopoly companies appointed to deliver both wholesale and retail water and sewerage services in their specified area of appointment.

The legislation provides for those who wish to participate in the competitive retail water supply market to hold a Water Supply Licence (WSL). Holders of WSLs can

compete with other WSLs and the appointed undertaker in its own area, providing services to customers that consume over the threshold requirement<sup>1</sup>.

Under the existing legislation only about 28,000 of the largest customers across England and Wales can choose their retailer – and only for their water supply service. Smaller customers are unable to choose their retailer and have to receive their water supply and all their sewerage services from the regional monopoly undertakers.

From April 2017 when the new retail market opens, all non-household customers who use the supply system and/or sewerage system of an undertaker whose area is wholly or mainly in England (referred to in this document as “eligible English customers”) will be able to choose their retail supplier for both water supply and sewerage services. All retailers who wish to participate in this larger market must hold a WSSL(s) with a retail authorisation.

For those non-household customers who use the supply system of an undertaker whose area is wholly or mainly in Wales the scope of the market will not be extended, reflecting the different policy position of the Welsh Government. Those customers who remain eligible in this market due to their water usage are referred to as “eligible Welsh customers”. All retailers who wish to participate in this market will apply for a WSSL with a restricted retail authorisation allowing them to provide water retail services to eligible Welsh customers. It will not be possible to provide sewerage services to these customers.

The WSSL incorporates standard licence conditions, which are designated by the Secretary of State in consultation with Welsh Ministers. If a licensee fails to comply with its licence conditions, enforcement action may be taken against it by Ofwat and, ultimately, its licence may be revoked. The standard conditions of the new licence(s) have recently been the subject of a Defra consultation “Water supply and sewerage licensing regime: standard licence conditions and approach to secondary legislation”.

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<sup>1</sup> The total quantity of water estimated to be supplied to the premises annually by the licensee is not less than 5 megalitres (MI)<sup>3</sup> in relation to premises supplied with water using the supply system of an appointed water company whose area is wholly or mainly in England and not less than 50 MI in relation to premises supplied with water using the supply system of an appointed water company whose area is wholly or mainly in Wales.

The application fee reflects the costs incurred by Ofwat to undertake the necessary assessments and run the associated public consultation. The fee will be £5,250 per application.

In the new market, it will be possible for individual eligible customers to elect to become their own retailer and self-supply with retail services. This would allow them to supply their own sites and those of persons associated with them, but would not allow them to become a retailer for any other sites

### **1.3 Structure of this guidance**

This guidance is structured as follows:

- Chapter 2 describes the licence application process including the requirements on the applicant and the stages of the assessment process.
- Chapter 3 provides assistance to applicants in completing the application form for a WSSL.
- Chapter 4 describes variations to the process for special circumstances.

Additionally, there are two appendices which provide additional information for applicants:

- Appendix 1 provides guidance on what should be included in and attached to a business plan. A business plan must be included with each application.
- Appendix 2 provides a copy of the prescribed form of Certificate of Adequacy which must also be completed and included with each application.

**Please note, this document sets out our understanding of the applicable law. This document is not a substitute for reading and understanding that applicable law. The document should be read in conjunction with relevant legal instruments and case law. Anyone in doubt about how they may be affected should seek legal advice.**

## 2. The licence application process

An entity that wishes to use an appointed company’s supply system for the purpose of supplying water and/or providing sewerage services to customers at eligible premises in England and/or Wales will need a WSSL. This chapter outlines the steps involved in the application process for a WSSL.

Our intention is that the application process should be thorough but not overly burdensome. The requirements as set out in the application form and this guidance ensure that prospective licensees know that they must prove they are fully competent in all areas before we will grant a WSSL.

The table below provides a high-level overview of the application process and sets out the structure to the remainder of this chapter.

| <b>Requirements of applicant</b>  |                                 |   |
|-----------------------------------|---------------------------------|---|
| <b>1</b>                          | <b>Understanding the market</b> | Applicants should be aware of the new market arrangements and the key decisions which have been taken by reviewing relevant background materials                  |
| <b>2</b>                          | <b>Geography</b>                | Applicants should identify which geographies they wish to operate in  |
| <b>3</b>                          | <b>Making an application</b>    | Applicants should apply providing the information required in the application form following the guidance set out in this document                                |
| <b>4</b>                          | <b>Payment of fee</b>           | At the same time, applicants should pay the relevant fee  |
| <b>Our application assessment</b> |                                 |   |
| <b>5</b>                          | <b>Initial screening</b>        | We will check applications for completeness   |
| <b>6</b>                          | <b>Our assessment</b>           | We will assess the applications for England & Wales against our criteria which will include consultation with other regulators (DWI or EA/NRW as appropriate)     |
| <b>7</b>                          | <b>Minded to grant</b>          | We will issue a minded to grant decision should the information provided pass our assessment criteria   |
| <b>8</b>                          | <b>Granting a WSSL</b>          | We will grant licences upon the applicant successfully passing the MOSL’s Market Accession testing  |
| <b>9</b>                          | <b>Issues</b>                   | If we identify shortcomings, we will inform applicants of reasons why we may reject or suspend an application. We also provide information on the dispute process |

In the final section of this chapter, we set out a more detailed process flow, which illustrates the various steps, parties and intended timings through the application process.

## **2.1 Understanding the market arrangements**

Before an applicant decides to apply for a licence it must understand the market in which it is seeking to operate. Applicants will have to satisfy Ofwat that they understand the market in which their licence(s) will authorise them to operate through their responses to the application form and additional documents required or information provided by the applicant in support of its application. Chapter 3 below sets out the type of information we would expect from an applicant to demonstrate its understanding. In addition, a summary document has been published to help potential applicants navigate the [legal framework](#) and understand the roles of the various participants in the market.

## **2.2 Potential joint applications for licences in England and Wales and licences in Scotland**

The WA14 seeks to establish a cross-border market between England, Wales and Scotland, recognising the separate legal system and regulators. It will be possible for applicants to make an application for licences in England and/or Wales and/or Scotland. However, for the time being, this guidance covers only applications to Ofwat for licences in England and/or Wales.

When the process to deal with such applications is available, licences in England and/or Wales and Scotland will be granted separately, and the assessment processes will be run separately by Ofwat and WICS respectively.

## **2.3 Making an application**

The WIA91 as amended by the WA14 and the licence application notice provide for Ofwat to process applications for WSSLs. Applications for a WSSL must be made in writing and contain the information set out in the licence application notice and the application form. We must have enough information to allow us to assess whether the applicant has the appropriate skills and competencies required of a licensee.

## **2.4 Payment of application fees**

At the same time that an application is made, an applicant must pay the application fee to have its application assessed. The application fee is intended to cover the average cost incurred by Ofwat in processing each application. It does not include any provision for the ongoing costs of regulating licensees. The revenue from application fees will be paid into the Consolidated Fund (that is, the Exchequer).

The application fee as described in the licence application notice is a fee of £5,250 as regards WSSLs. This will be applicable regardless of the type of WSSL or the number of authorisations requested in relation to those WSSL(s) in a single application form. Payment should be made to Ofwat by cheque or by electronic transfer. Receipts will be issued on request.

An application will not be processed until the application fee has been paid.

## **2.5 Initial screening and public consultation**

We will only accept applications that are complete and contain all the information we require. We will not commence the process until we have all the required information and the application fee has been received. We aim to have checked whether an application is complete within 5 working days of receipt.

As soon as reasonably practicable following our decision that we are satisfied that a completed application has been received, we will provide the applicant with written confirmation. The written confirmation will signal the start of our assessment process and after that point, we can confirm to MOSL that an application has been received.

We will publish a notice of an application on our website which will state the name and address of the applicant and the type of licence that they have applied for. This will commence Ofwat's 20 working day public consultation period.

As part of the assessment process we will share the information provided by applicants with the DWI, EA and NRW. Applicants will be required as part of completing the application form, to confirm that they consent to this information being shared with these organisations. During the 20 working day public consultation period, any review of the application by the DWI, the EA, and where relevant the NRW, will take place. In the event that such a review identifies areas of concern and further information is required, it may in some instances take longer than 20 working days to complete the review.

## 2.6 Our assessment of applications

As part of the assessment of an application, we will consider whether the applicant has the appropriate level of competency to hold the type of WSSL requested. We will do this by assessing a number of key areas, including managerial, financial and technical competencies.

- **Managerial competency** is a key element of our assessment criteria. In particular, we look at: the skills, qualifications and experience of the applicant's staff; whether the applicant has adequate knowledge and understanding of the duties of licensees under the law and licence conditions; its systems and procedures in place for complying with those duties; and the overall quality of the submission. We may invite applicants to a meeting for applicants to demonstrate further their managerial competence.
- With regards to **financial stability**, we consider whether the applicant has: sufficient financial resources for its business plan; the capacity to raise new funds in future; and provision to finance its obligations under the law.
- The applicant should be able to demonstrate that it has **technical competency** relating to measures expected of DWI, EA and /or NRW. For example, knowledge of the relevant security and emergency measures required. The DWI, EA and NRW will provide an assessment of whether applicants have the technical expertise required.

As detailed above there will be a public consultation period and we will consider third party representations to this when assessing a licence application. Ordinarily, we expect to provide copies of any third party responses to the applicant. If the responses raise any substantial concerns, we will attempt to resolve these in discussion with the applicant. Having received their responses, we would not expect to consult further with those third parties that make representations on an application.

We expect our assessment of the application to take 40 working days following the closure of the public consultation referred to above. This is an indicative timescale only. The process may take longer should we require further clarification or information from the applicant or if complex issues arise from our assessment or from the representations of third parties.

Chapter 3 of this document and the application form provide details of the information which applicants need to provide us with to demonstrate these competencies. We have not set prescriptive criteria that we will require applicants to

fulfil before we will grant a WSSL. The requirements set out aim to ensure that any entity granted a WSSL is competent to be a licensee.

## **2.7 Minded-to-grant subject to market entry assurance certification**

We will issue a minded to grant letter on the successful conclusion of our assessment process. However, we will not formally grant a WSSL to an applicant until we have received confirmation from MOSL that the applicant has satisfactorily completed market entry assurance certification. Without certification from MOSL, an applicant will not be granted a WSSL and will be unable to participate in the market.

The WSSL application process and market entry assurance process are distinct and separate processes carried out by Ofwat and MOSL respectively. However, the outcomes of each process are interdependent. MOSL will not permit entry to the market entry assurance process unless an applicant has, at the very least, applied for a WSSL.

For clarity, completing the market entry assurance certification is a necessary step for Ofwat's consideration of whether to grant a WSSL. However, the completion of the market entry assurance process in no way removes the discretion for Ofwat to approve or reject a licence application.

Following grant of a WSSL, the applicant must also satisfy the remaining trading conditions, including, for example, signing wholesale contracts with those appointed companies in whose area it wishes to provide retail services to customers.

## **2.8 Granting a WSSL**

Upon receipt of certification from the MOSL that the applicant has completed the market entry assurance process, we will then be able formally to grant the WSSL. Under section 17F(7) WIA91, as soon as practicable after granting a licence, we are required to serve a copy of the licence on the licensee. We must also serve a copy on the Secretary of State, the Welsh Ministers, the DWI, the EA, the NRW, CCWater, each relevant appointed company and all other licensees. We will retain a copy of the licence or variation of the licence on our public register.

When a licence is granted, we will issue a press notice. We will also maintain a list of licensees on our website.

## 2.9 Suspending or refusing a licence application

We may suspend the licence application process under certain circumstances. Examples would be where the applicant has not provided sufficient details for the DWI or the EA/NRW to contribute to the assessment of the application, or if the applicant needs to take action following representations received by us from other third parties during the public consultation. We will tell the applicant why the application process has been suspended and invite it to remedy the defects. The onus is on the applicant to provide the necessary additional material and we will not continue to consider the application until this is received. If the defects are remedied successfully, the application and timetable will resume from the point at which it stopped.

Suspending a licence application is not the same as refusing an application. We may refuse an application if, for any reason, the applicant has not demonstrated that it is suitable to be granted a licence. Examples of situations in which we consider it may be appropriate for us to refuse an application are given below.

- We will refuse a licence if the applicant has failed to successfully complete the market entry assurance certification process.
- We may refuse a licence if the applicant has failed consistently to provide the required information.
- We may refuse a licence if the applicant does not demonstrate to us, the DWI or the EA/NRW that it is suitable to be granted a licence. For example, if:
  - there is concern about the ability of the applicant to fulfil regulatory requirements;
  - the applicant is not aware of what its responsibilities will be as a licensee or the potential consequences of its actions;
  - the applicant does not have a viable business plan;
  - key personnel are shown to be unsuitable; or
  - the applicant has previously had a licence revoked or application refused and cannot show that it has taken steps to address the reasons for the original revocation or refusal.
- We may refuse a licence if we consider that information supplied is false, misleading or incomplete.

This is not an exhaustive list of reasons for refusal.

Section 17F(4) WIA91 provides that if we propose to refuse an application, we must notify the applicant:

- stating that we propose to refuse the application;

- stating the reasons why we propose to refuse the application; and
- specifying the time within which representations or objections to the proposed refusal may be made.

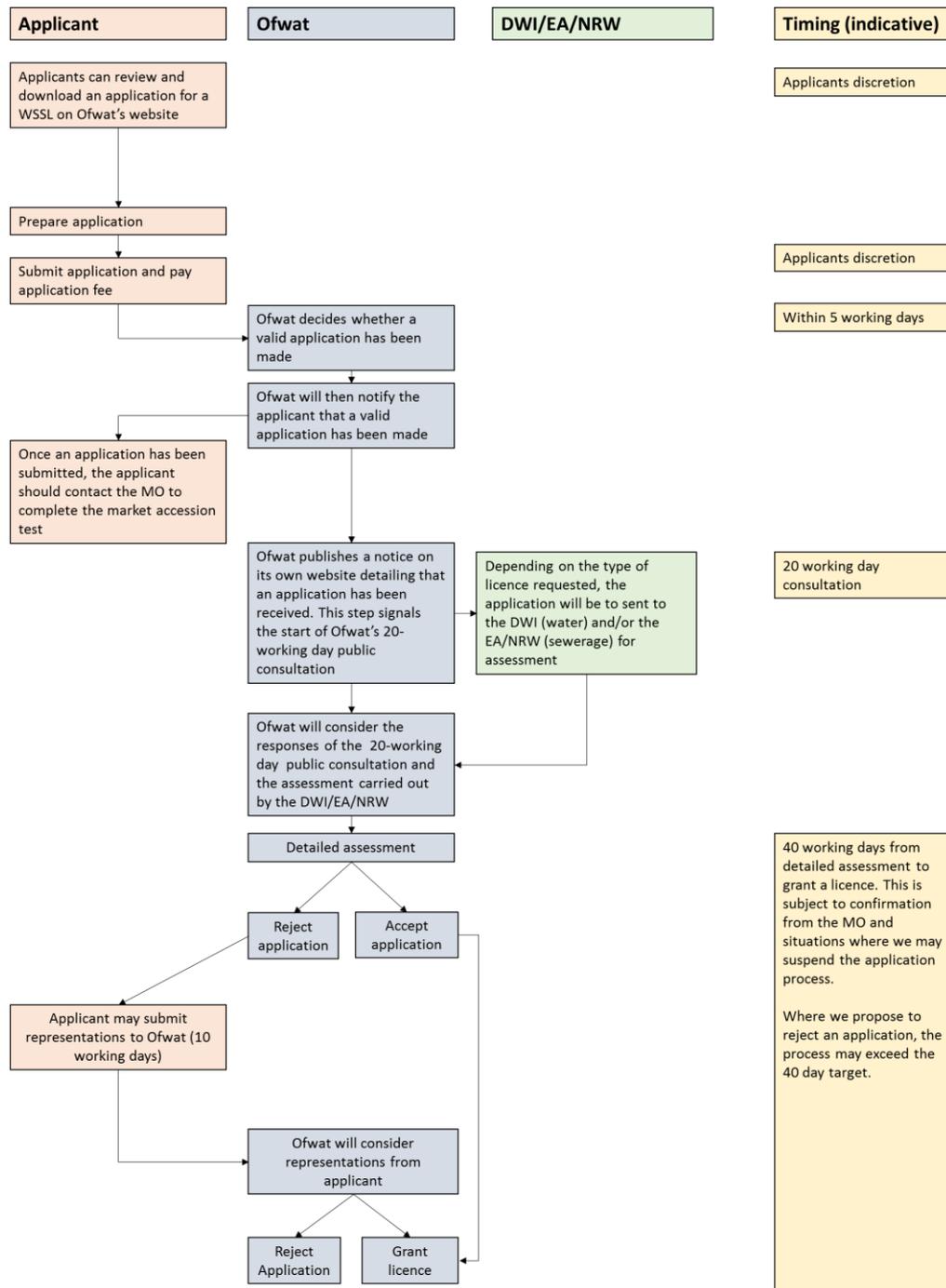
We must consider any representations or objections which are duly made and not withdrawn. The applicant will have the opportunity to make representations or to submit the necessary additional information to us within a specified time, normally 10 working days. We may refer this additional information to the DWI, the EA or the NRW as appropriate.

Following consideration of any representations we will confirm our decision.

An applicant that has had an application refused is not prohibited from making another application.

## 2.10 Application flow chart

The flow chart below illustrates the stages for the various parties and the intended timings through the application process.



## **3. The application form**

This Chapter outlines the information and supporting documentation that needs to be submitted to Ofwat to make an application for a WSSL. Each application will be considered on its own merits and will be assessed for managerial competency, financial stability and technical competency. Procedural and statutory requirements need to be checked before an application can proceed to ensure, for example, that the application fee has been paid. The application for a licence(s) must be made in writing and the declaration included in the application form signed for or on behalf of the applicant.

We consider that this approach will give confidence to customers, appointed companies and other licensees that any entity granted a WSSL has the capability to be a licensee and has the competency to comply with the Standard Conditions of the WSSL for which they are applying.

The application form is split into 5 sections. Applicants must complete and provide all of the information required in sections 1 and 5 of the application form in all instances.

Applicants applying for a WSSL in England and/or Wales must also complete section 2 and provide the required enclosures in section 4. The following paragraphs provide details of the type of information we require to assess applications, and should assist applicants in completing these sections of the application form.

### **3.1 Section 1: General particulars**

#### **3.1.1 Type of application (question 1)**

The application form requires applicants to select the type of licence for which they are applying. There are three things we need to know to assess the application for the appropriate type and form of the licence:

##### **Where the applicant wishes to operate**

Applicants are asked to select England and/or Wales. Applicants who select “England” are indicating that they would like to use the supply system and/or sewerage system of an appointed company whose area is wholly or mainly in England to provide services to eligible customers. For this purpose, supply system

has the meaning in section 17B(4A) WIA91 (as that section is to be amended by WA14). If successful, the WSSL would contain a retail authorisation.

Applicants who select “Wales” are indicating that they would like to use the supply system of an appointed company whose area is wholly or mainly in Wales to provide services to eligible customers. For this purpose, supply system has the meaning in section 17B(5) WIA91 (as that section is to be amended by WA14). If successful, the WSSL would contain a restricted retail authorisation. Licensees should note that the Welsh Government has chosen a different policy from Defra as regards eligible customers and certain other regulatory matters.

### **The type of service the applicant wishes to provide.**

Applicants are asked to indicate whether they wish to provide water supply services and/or sewerage services in relation to each country in which they wish to operate. Applicants should note that it is not currently possible to apply for a sewerage licence in relation to the use of supply systems of appointed companies whose areas are wholly or mainly in Wales.

Although the WSSL which is granted in relation to each service category is expected to be the same, there will be separate licences granted and applicants should be aware that there are separate statutory provisions in the WIA91 in relation to water supply and sewerage service provision respectively. In particular applicants should note the offences in sections 117P and 117Q WIA91.

### **Other information about special forms of licence**

Applicants are asked to indicate whether they wish to apply for a licence which will authorise them to supply any eligible customers or whether they wish to restrict their licence in some way. As regards applications which indicate that the applicant wishes to operate in England in response to question 1(a), applicants may choose to restrict their licence to supplies to:

1. persons associated with the licensee; and/or
2. the licensee only

by ticking the “self supply” option in response to question 1(a). Self supply licensees are likely to have less onerous obligations under the regulatory framework but will also be required to provide some additional information about its premises in their application form (please see Chapter 4 below). This option is not available for those wishing to use the supply system of appointed companies whose areas are wholly or mainly in Wales.

### **3.1.2 Contact information (question 2)**

Where the applicant is not an individual, please provide the contact details (contact name, position in applicant's organisation, postal address, email address and telephone number) of the person who may be contacted concerning the application.

### **3.1.3 Managerial competency (questions 3- 13)**

(Question 3) Where the application is by an individual, please indicate the contact details (business address, telephone number and email address). Where the applicant is not an individual, please indicate the jurisdiction in which the applicant is established and the address of its principal place of business. In setting out the applicant's legal status, please indicate whether the applicant is, for example, a body corporate, partnership, unincorporated association, individual or some other entity.

(Question 4) The persons concerned in the direction or management of the applicant's affairs would typically include, in the case of companies, their directors (executive and non-executive) and, in the case of partnerships, each of the partners. In addition, details of any other persons occupying senior management positions (for example, chief executive, financial controller etc) should be provided where those individuals will be directly accountable for the licensed part of the applicant's business. If the applicant is an individual the answer to this question should be 'Not applicable' or 'N/A'.

(Question 5) If the applicant has no ultimate controller, the response to this question should be 'Not applicable' or 'N/A'.

For the purpose of the application as a whole, the 'ultimate controller' means a person or undertaking who, acting alone or jointly, has control of the applicant and is not itself controlled by another person or undertaking. Where the applicant is the member of a group of companies, for instance, details would typically be required of the parent company within that group. The concept of control should be interpreted and assessed in accordance with Merger Regulation (Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 24/1, 29.1.2004)

(Question 6) The applicant should provide details of any relationship it has with an appointed water and sewerage company where there is common ownership or common control. The applicant should provide an organisational structure chart which makes clear the nature of the relationship between the applicant and the

relevant company, and should make clear the nature of any contractual relationships it has with the company.

(Question 7 and 8) Details should be provided of any current and/or previous employment within a regulated utility of those persons referred to in question [4], along with any professional or industry qualifications. This information should include, but is not limited to, regulated utilities within England and Wales.

In addition to any experience in the water and sewerage industry, previous retail experience or previous experience of other regulated utilities such as electricity, gas or telecommunications will be particularly relevant.

(Questions 9) Applicants should give details of all previous or similar applications for a licence by the applicant or any of the persons referred to in question 4, including applications that were refused, withdrawn or otherwise unsuccessful.

(Question 10) Applicants should include details of every occasion on which the applicant or any of the persons referred to in question 4 has been involved with a regulated utility which has been the subject of enforcement or revocation proceedings in respect of its licence or other authorisation, as well as details of any insolvency event.

(Question 11) Applicants should include pending and anticipated litigation, as well as ongoing litigation. Disclosure should cover not only court proceedings, but also those raised by or before any other tribunal or regulatory agency. Applicants should also indicate the jurisdiction in which each litigation has been raised. Where there is a large number of cases to disclose, for example, in relation to routine debt collection, we are willing to consider disclosure of information on a categoric basis.

(Question 12) Applicants should indicate the jurisdiction in which they were convicted. We would not expect applicants to submit information about minor convictions or penalties, such as routine traffic violations. If applicants are unsure about whether or not something is a 'minor' conviction or penalty, then they should raise it, on a categoric basis, with us prior to making their application. Applicants should note that we regard civil penalties as including any enforcement orders issued by a court, tribunal or other regulatory agency.

If the persons referred to in question 4 have no unspent convictions an individual declaration signed by each of these person(s) should be provided.

### **3.1.4 Financial stability (questions 13)**

With regards to **financial stability**, we consider whether the applicant has: sufficient financial resources for its business plan; the capacity to raise new funds in future; and provision to finance its obligations under the law.

(Question 13) The applicant's response to information on financial backing, alongside other enclosures including business plan and Certificate of Adequacy provides the basis on which we make this assessment. This should contain information regarding the organisational structure and management team, for example CVs for key personnel; corporate strategy; resources for delivery; and both current and forecast financial information, for example audited statutory accounts and annual report (if available). As part of the business plan, we also require declarations, signed by an authorised person, that the applicant will work with CCWater, the DWI, the EA and the NRW. In appendix 1 we set out more detailed guidance on our expectations regarding business plans supporting an application.

### **3.1.5 Further information (questions 14 to 16)**

(Question 14) The Secretary of State will determine the Standard Conditions of the WSSL which apply to all licences granted under section 17H and section 17HA of the WIA91. In granting a particular licence, we may exclude or modify any of the standard conditions to such an extent as we consider requisite to meet the circumstances of a particular case.

If applicants consider that we should exercise this power in the case of their application, they should set out their reasons in response to this question.

(Question 15 and 16) If the applicant is supplying any additional information in response to this question 15 and 16, such other information may be included in any of the supporting documents submitted with the application form, or it may be included in extra sheets added to the completed form.

## **3.2 Section 2: Additional Information**

### **3.2.1 Fit and Proper' requirement (question 1)**

We will have regard to the responses to previous questions in considering whether a person meets our requirement to be fit and proper. In determining whether a person is fit and proper, we will have regard to, but will not be limited to:

- Any statement setting out the circumstances of the case where the person has been convicted of a criminal offence in response to Question 13.
- Any statement setting out the circumstances of the case where the person has been the subject of any adverse finding or any settlement in civil proceedings in response to Question 13.
- Any statement setting out the circumstances of the case where the person is currently involved in litigation in response to Question 12.
- Any statement setting out the circumstances of the case where the person has been the director, partner or concerned in the management of a business that has gone into insolvency liquidation or administration while the person has been involved with that organisation in response to Question 11.
- Whether the person has been, or is currently, the subject of investigation or disciplinary proceedings by any regulatory body. The applicant must provide details of any regulatory investigations or disciplinary proceedings in the last three years involving the applicant (or any of the individuals concerned with the direction or management of the applicant). A statement setting out the nature of the investigation/ disciplinary matter(s) must be provided.

### **3.2.2 Technical competencies (Questions 2 and 3)**

The applicant should be able to demonstrate that it has adequate knowledge of the issues set out below. For some of these requirements, for example knowledge of the relevant security and emergency measures required, the applicant may be able to fulfil this requirement by showing that it has access to advisers with adequate knowledge of these issues.

The applicant should have an adequate understanding of the legal duties and responsibilities of a licensee, and be able to set out how these duties and responsibilities will be complied with. The applicant should set out how it intends to ensure that it will comply with its duties under the WIA91, and with the Standard Conditions of the WSSL, and how it will demonstrate that it will be compliant. The

applicant should be able to set out how it intends to communicate emergencies and details of sensitive customers to the relevant appointed company:

- comply with its duties under the WIA91;
- comply with the Standard Conditions of the WSSL; and
- communicate emergencies and details of sensitive customers to the relevant appointed company.

## **Requirements from the DWI**

The DWI is concerned to ensure that applicants for a WSSL have an overall understanding of water supply and water quality issues and the potential environmental impacts that can arise from their usage of supply and sewerage systems so that licensees' activities do not have a detrimental effect on an appointed company's supply system, network or sewerage treatment processes.

Applicants will also need to be aware of the role of the DWI and of their responsibilities under the relevant sections of the WIA91 and regulations including:

- the regulatory requirement to provide wholesome water;
- the definition of water unfit for human consumption;
- the penalties for supplying water unfit for human consumption;
- the circumstances in which they are required to notify appointed companies, for example those identified in the Water Undertakers (Information) Direction 202;
- the implications of the Water Supply (Water Fittings) Regulations<sup>2</sup>;
- relevant security and emergency directions issued by Defra and/or the Welsh Government. Licensees may sub-contract the implementation of these plans, but will need an understanding of the situations that can arise and of the potential need for appointed companies to communicate directly with the licensee's customers.
- The appointed companies Water Resources Management Plan and Drought Plan and its responsibilities in helping to develop, maintain and action these;
- the management of planned and unplanned events including droughts; and
- the duty to promote the efficient use of water under section 93A of the Water Industry Act 1991.

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<sup>2</sup> The Water Supply (Water Fittings) Regulations 1999 (SI 1999/1148, amended by SI 1999/1506 and SI 2005/2035).

There is further guidance in the [DWI website](#).

### **Requirements from the EA / NRW**

The EA and NRW are concerned to ensure that applicants for a retail WSSL licence have an overall understanding the potential environmental impacts that can arise from their usage of supply and/or sewerage systems. Applicants will also need an understanding of water supply and sewerage systems and their role in managing water demand. This is to ensure that licensees' work does not have a detrimental effect on the appointed water company's network, sewerage treatment processes or the environment. This will include:

- an overall understanding of domestic and non-domestic drainage, sewage (including trade effluent) and sewerage systems;
- an overall understanding of sewerage and sewage treatment processes,
- the potential environmental impacts that might arise from discharges into and from sewerage systems;
- responsibilities with regard to environmental incidents such as flooding or pollution;
- knowledge and awareness of more sustainable approaches to surface water drainage (SuDS);
- the relevant appointed company's Water Resources Management Plan and Drought Plan and its responsibilities in helping to develop, maintain and action these;
- the management of planned and unplanned events including droughts; and
- the duty to promote the efficient use of water under section 93A of the WIA91.

#### **3.2.3 Eligibility issues (question 4)**

Applicants should demonstrate that they have the understanding and procedures in place in order that they can identify whether a customer is eligible for switching. In particular the retail and restricted retail authorisations differ in respect of the premises that are eligible.

#### **3.2.4 Customer facing systems (question 5)**

Recent experience in the energy market has demonstrated that problems related to customer service can compromise the switching process for customers and undermine general confidence in the market. So with the potential for some licence holders to increase the scale of business rapidly as a result of being an acquiring

licensee for a retail exit or through other activity in the new market, we have included a question in this area.

The question asks applicants to explain how they have satisfied themselves that their customer facing systems and procedures have the capacity and capability to support the proposed business plan. The question is designed to get applicants to explain what design thinking and/or testing they have done to make sure that if they do acquire large numbers of customers, they can maintain service standards for both their existing and new customers. We expect this to cover aspects such as IT systems and staffing levels and training.

By customer facing systems and procedures, we mean those that applicants use for any element of service after a customer has signed-up with them, until the point at which they transfer to another retailer. Aspects such as sales and marketing are of less concern since the impact of any deficiencies will be on the applicant rather than the customer.

The question has been designed to be proportional for different types of applicants. So for example, applicants who have only a small number of customers or whose business plans do not signal rapid growth in customer numbers will need to provide less information than those who intend to grow quickly.

### **3.2.5 Fee (question 6)**

As detailed at paragraph 2.4 above, the applicant must submit the application fee with the application form. Until the fee is provided, the processing of the application form will not commence. An applicant may pay the fee owed to Ofwat by either electronic transfer or cheque. If you wish to pay by electronic transfer please contact [Ofwat's Case Management Office at [casemanagementoffice@ofwat.gsi.gov.uk](mailto:casemanagementoffice@ofwat.gsi.gov.uk)] for further details. If you are paying by cheque, please make this payable to [The Water Services Regulation Authority].

## **3.3 Section 3:**

Section 3 of the form has been intentionally left blank pending future developments of the application process.

## **3.4 Section 4: Enclosures**

This section provides a list of tick boxes to ensure that all the additional documents required by the notice of determination are included with the application form. If you do not provide the information required within this section we will be unable to process your application.

### **3.4.1 Fee**

Please ensure that you have enclosed the application fee.

### **Evidence of managerial competency**

The application should be supported by the following enclosures which will provide evidence to help our assessment of the competency of management.

### **3.4.2 CVs for key personnel**

Please refer to Appendix 1 of this guidance for more information.

### **3.4.3 Organisational structure**

Please refer to Appendix 1 of this guidance for more information.

### **3.4.4 Declaration of no unspent criminal convictions**

The applicant must provide details of any criminal cases during the past three years which involve the applicant (or any of the individuals concerned with the direction or management of the applicant) where the applicant (or the individuals concerned) have plead guilty or have been found guilty of a criminal offence and/or been subjected to a civil penalty. A statement setting out the circumstances of the case(s) must be provided.

If the applicant (or any of the individuals concerned with the direction or management of the applicant) do not have unspent convictions to provide details of, then a declaration to that effect from each of the individuals must be submitted as an enclosure to the application form.

### **3.4.5 Declarations of ‘fit and proper’ status**

A declaration must be provided as an enclosure to the application form by all persons concerned with the direction or management of the applicant, stating that the person:

- Does not have any unspent convictions
- Has not been the subject of any adverse finding or settlement in civil proceedings
- Is not, or has not within the last three years, been the subject of a regulatory investigation or disciplinary proceedings
- Has not been involved in the management of a business that has gone into insolvency liquidation or administration while the person has been connected with that organisation, or within one year of that connection.

### **Evidence of financial stability**

The application should be supported by the following enclosures which will provide evidence to help our assessment of the financial stability.

### **3.4.6 Business Plan**

Please refer to Appendix [1] of this guidance for more information.

### **3.4.7 Audited statutory accounts and annual report if available**

Please refer to Appendix [1] of this guidance for more information.

### **3.4.8 Certificate of Adequacy**

The WSSL has an obligation on all licence holders to submit a certificate of adequacy each year to confirm that they have sufficient management, financial, technical, operational and other resources to meet their obligations under the licence. As part of the application process for the new WSSL, applicants are required to provide a completed certificate of adequacy at the time of application.

It is important that when preparing the certificate, the applicant has in mind the details of their proposed business plan. So for example, if an applicant is preparing to become an acquiring licensee for a retail exit by one of the undertakers, their view on the adequacy of resources should be expressed for the scale of business that will

be required after the exit process has been completed. The same considerations would apply if the applicant's intended business model was to acquire a substantial portfolio of customers as a result of a competitive tendering process, or through a commercial transaction with another retailer.

The certificate of adequacy is based on self-assurance, and there is no requirement for an applicant to obtain third-party assurance. Where the applicant has chosen to undertake specific internal or external reviews prior to submission of the completed certificate, it may wish to provide a summary of these reviews as additional evidence in support of its submission.

A copy of the certificate of adequacy which needs to be completed on application is available in Appendix 2.

### **3.4.9 Statement from Financial Backer (if appropriate)**

If the applicant is being supported by a financial backer, the business plan should be accompanied by a declaration from the financial backer that they are willing to provide funds based on the business plan. This should be submitted on headed paper. 'Financial backers' are those entities that the business plan indicates are expected to provide all or most of the finance for the applicant's activities over the following three year period. They may include lenders or the applicant's parent company. If finance is intended to be provided from more than one source, the applicant should provide a declaration from each major backer. These declarations will not constitute a guarantee that funds will be available, but are intended to give us additional assurance that new licensees will be able to fund their functions.

## **Evidence of technical competency**

The application should be supported by the following enclosures which will provide evidence to help our assessment of the technical competency.

### **3.4.10 A declaration from the applicant that, if granted a licence, it will work positively with CCWater, the DWI, the EA and the NRW**

The applicant is required to provide a declaration that, if granted a licence, it will work positively with the CCWater. CCWater has a duty to represent and provide information to consumers, including those supplied by a licensee. Applicants should

be aware that CCWater will be able to direct licensees to provide information that it requires for the purpose of carrying out its functions. The requirement for a declaration is intended to make the applicant aware of CCWater and that they will need to work together. Further information on CCWater's role is available on its website [www.ccwater.org.uk](http://www.ccwater.org.uk).

The applicant is also required to provide a declaration that, if granted a licence, it will work positively with the DWI, the EA and the NRW, and that it will provide information that the organisations request.

### **3.4.11 Declarations that persons detailed at question [4] of this application form that they are aware of the responsibilities of licensees under the WIA91, including responsibilities in relation to security issues under section 208 WIA91**

The requirement for a declaration is intended to direct the attention of the applicant to the responsibilities of licensees as set out in WIA91, and particularly to the responsibilities in relation to security issues set out in section 208 WIA91.

## **3.5 Section 5: Declaration**

The declaration made is a personal declaration made by the person signing the application form. Where that person is not an individual applicant for a licence (or licences), e.g. if the person signing the form is signing on behalf of his or her company, the term "enquiry of the applicant" means enquiry of the company.

Except in the case of an individual applicant, we would expect this declaration to be made by one of the persons named in response to question [4], and preferably, by the person occupying the most senior executive position within this group.

## **Appendix 1: Business plan guidance**

### **A1.1 Introduction**

As part of the application process, we will need to assess applicant's capabilities to carry out the activities authorised by the type of licence for which they are applying. The applicant's business plan is a key document in support of the applicant's licence application and provides the applicant with the opportunity to demonstrate that it has the following expected competencies.

- Relevant knowledge, expertise and experience.
- Financial acumen and business viability.
- Effective governance and management arrangements.

We will require applicants to provide specific supporting information to assist us in our assessment. We will look to see whether an applicant has demonstrated that it has appropriate financial stability, managerial competence, and an understanding of the legal framework and of the responsibilities of a licensee.

#### **A1.1.1 Business plans**

To assess an applicants' financial and managerial viability, we will require each applicant to submit a business plan. This business plan guidance has been prepared to assist the applicant to provide the information required by Ofwat to undertake an assessment of the application. The applicant must set out the business plan in the prescribed structure. This guidance provides the issues to be addressed in each section of the business plan.

#### **A1.1.2 General Guidance for Completion**

Applicants should bear in mind the following points:

- The specific guidance set out at the beginning of each section below is designed to be a helpful prompt to the applicant on the type of information we require to undertake our assessment. It does not preclude additional information being provided that the applicant feels may be helpful in support of their application.
- Providing answers to the business plan questions is the essential minimum required, and Ofwat expects the applicant to demonstrate that it has the required

managerial, financial and technical capability to perform adequately the activities authorised by the licence.

- The purpose of the business plan is to assess the applicant's proposed approach to undertaking the licensed activities. To that end the business plan should refer to the applicant's approach to only those licensed activities.
- The business plan should demonstrate that the applicant's licensed business will be suitably independent of the applicant's (or its related company's) other activities.
- The business plan should be accompanied by a covering letter confirming that it has been agreed by those persons concerned in the direction or management of the applicant.

Applicants should follow the prescribed structure below when writing their business plans. Please see the following sections for more information:

- Executive Summary (1.1.3.)
- Corporate Structure and Management Team (1.1.4.)
- Strategy (1.1.5.)
- Delivery (1.1.6.)
- Financial Information (1.1.7.)

When considering an applicant's submission, Ofwat will have particular regard to the following for all sections of the business plan:

- The completeness, detail and reasonableness of the assumptions;
- Documentary evidence of the formal adoption of the business plan by the responsible person; and
- Consistency across and between all sections of the business plan.

### **A1.1.3 Content of business plan**

The applicant's business plan should as a minimum cover the three years following its application, be presented in the prescribed structure set out below and contain the information listed below. These requirements should be seen as a minimum; in most cases we would expect applicants to provide additional supporting information where this is appropriate. The onus is on the applicant to ensure that its plan includes all information necessary to make an informed assessment of its financial and managerial viability.

The business plan should include any assumptions underlying the applicant's financial projections.

#### **A1.1.4 Executive Summary**

This section should provide us with a high level summary of key points from the applicant's business plan and the activities it plans to undertake if granted a WSSL.

#### **A1.1.5 Corporate Structure and Management Team**

##### **Purpose of the section**

The purpose of this section of the business plan is for the applicant to demonstrate that it has the knowledge, expertise and experience to operate a water supply and/or sewerage services business. The applicant should also ensure that its business will comply with best practice in corporate governance. It is essential for the applicant to demonstrate that its licensed business is suitably independent of the applicant's (or its parent's or associate's) other activities. In particular, the applicant must ensure arms-length trading in situations where the applicant is part of a group of companies that includes an appointed company that is already regulated by Ofwat.

##### **Outline of issues to be addressed**

To demonstrate this managerial and technical ability, the applicant should ensure that the following questions have been addressed:

- What is the organisational structure of the business? (Applicants should provide a diagram of the overall company structure.)
  - Where the applicant is a member of a group of companies, the diagram should show all the members of the group up to and including any ultimate controller. The diagram should illustrate each company which directly or indirectly controls the applicant, and the companies that are directly or indirectly controlled by the applicant.
- What are the key roles within the organisation and their associated responsibilities? (Applicants should provide a management structure diagram/organogram.)
  - Where there is overlap in personnel holding positions in the proposed WSSL business with a business that we regulate, at least one member of the senior management team should be independent of these businesses. Where there is overlap in roles, these should be clearly identified.
- What skills does the applicant consider are prerequisites of the key roles identified?
- Who has been identified to fill those key roles?

- Do the individuals identified to fill the key roles have the skills necessary to fulfil the requirements of the key roles? (Applicants should include the CVs of those people who have been appointed to the key roles and other key personnel. These should include details of any professional qualifications and relevant experience.) Details of sub-contractors who will be involved in the licensed activity should also be provided.
- What are the applicant's legal/corporate governance arrangements?
- Who are the applicant's advisers, including accountants, lawyers and technical advisers? (Applicants should provide information on how the applicant plans to make use of their expertise.)
- Applicants should state, if they are associated with an undertaker, steps which that undertaker has taken to ensure that the applicant is given no undue preference compared to other market participants.

### **A1.1.6 Strategy**

#### **Purpose of the section**

In this section, the applicant should set out its strategy for its intended operation in the market and environment.

#### **Outline of areas to be addressed**

- What is the applicant's strategy for the business? In particular:
  - What are the applicant's objectives for the first three years of operation?
  - What are the timescales for delivery of the applicant's key overall objectives?
  - Which customers will the applicant be serving or targeting?
  - Whether the applicant intends to be an acquiring licensee under the exit provisions of the Water and Sewerage Undertakers (Exit from Non-Household Retail Market) Regulations 2016<sup>3</sup>?
- What impact, if any, will the proposed strategy have on customers? For example, how will the level of service to customers be affected and how does the applicant propose to measure this?
- What pricing strategy does the applicant propose to adopt with its customers?

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<sup>3</sup> The Regulations are yet to be finalised having been consulted on by Defra in 2015. For further detail please refer to Defra's consultation document.

### **A1.1.7 Delivery**

#### **Purpose of the section**

In this section, the applicant should set out the resources that it considers it requires to deliver the strategy described in the preceding section.

#### **Outline of areas to be addressed**

- What resources does the applicant need to deliver its strategy? The applicant should address this question in relation to the following:
  - Assets required (for example, call centre and IT.) This should be cross-referenced with the opening balance sheet where it is intended that the assets will be owned by the applicant. Where the assets are not to be owned, the applicant should outline from whom (and on what commercial terms) the principal assets will be leased/ main services outsourced).
  - Details of the workforce in terms of total planned numbers and by department;
  - What are the current proposals for staff development including recruitment or training plans?
- How does the applicant intend to manage its key relationships (e.g. with its wholesaler, CCWater, the DWI, the EA and the NRW as appropriate)? Applicants should provide a declaration signed by a responsible person to state that they will work with CCWater, DWI and EA/ NRW as appropriate.
- What provisions has the applicant made to deal with emergency situations and issues of security of supply and what allowances have been made for associated costs? (For example, how will the applicant work with the wholesaler to manage and resolve emergencies such as drinking water contamination?)
- What provisions has the applicant made to manage operational incidents? (For example, how will the applicant work with the wholesaler to manage and resolve operational matters such as planned and unplanned interruptions to supply and metering issues?)

### **A1.1.8 Financial and asset information**

#### **Purpose of the section**

The applicant should demonstrate its financial acumen and the viability of the business it has proposed. This section should focus on the finance required by the

business, consistent with the expenditure needs identified in the previous two sections.

### **Outline of areas to be addressed**

- What are the estimated costs that will be incurred in providing services to its customers?
- What is the estimated revenue that will accrue from those customers?
- Does the applicant consider that these factors will change over time and if so, how?

Ofwat expects that the applicant will ensure that the financial information set out below has been provided.

- Opening balance sheet and relevant financial assumptions providing a detailed analysis of start-up assets and activities;
- Information regarding the funding arrangements of the business, in particular the capital structure and working capital arrangements;
- Projected closing balance sheets for the following three years (to include an annual breakdown);
- Three years' projected cash flow statements (to include an annual breakdown);
- Three years' projected profit and loss statements (to include an annual breakdown). These statements should provide the projected turnover figure from licensed activities and refer to turnover from other activities if they have a material impact on financial projections;
- Forecasts of revenue. The applicant should ensure that revenue forecasts are consistent with information provided in previous sections;
- Expose any material financing assumptions, including cost of debt or equity, critical financial indicators or covenants, implied capital structure and dividend policy; and
- Details of any measures that the applicant and its associated companies consider are necessary to ensure appropriate arm's length trading between themselves.

The applicant should provide commentary as appropriate on the items in these statements.

## Appendix 2: Certificate of adequacy

### **Form of Certificate of Adequacy determined by the Authority pursuant to Standard Condition 4(1) of a water supply and sewerage licence**

Standard Condition 4 of the water supply and sewerage licence of [insert company name] (the “**Licensee**”) granted pursuant to section 17A and / or section 17BA of the Water Industry Act 1991 (the “**Licence**”) requires that an authorised signatory of the Licensee certify to the Authority that all of the arrangements required by Standard Condition 3 are in place and that the Licensee has, and will have until 31 March in the following year, all the management, financial, technical, operational and other resources needed for securing that it is able to meet the obligations mentioned in Standard Condition 3.

Standard Condition 3 provides that the Licensee shall ensure that all such arrangements have been made as are necessary for securing that:

(a) it is and continues to be able to meet its obligations under:

(i) its Licence; and

(ii) any statutory requirement imposed on it and which applies to the activities authorised by its Licence; and

(b) it has sufficient product and public liability insurance for the activities authorised by its Licence.

In compliance with Standard Licence Condition 4, and having made appropriate enquiries into the Licensee's resources, the authorised signatory whose name appears below certifies on behalf of the Licensee:

(1) that all of the arrangements required for the Licensee to meet its obligations mentioned in Standard Condition 3 are in place; and

(2) that the Licensee has, and will have, until 31 March [insert year], all the management, financial, technical, operational and other resources needed for securing that it is able to meet the obligations mentioned in Standard Condition 3.

**[Insert full name and job title of the director, company secretary or other authorised signatory responsible for this certificate. Please refer to Guidance for the appropriate level of person to give the certificate]**

For and on behalf of **[insert licensee/proposed licensee name]**

Date **[insert date of issue]**

## Glossary of terms

**Application fee:** Fee charged by Ofwat to recover the administrative costs of processing the application.

**Application form:** the form as contained in the schedule to the licence application notice.

**Appointed company:** A company holding an appointment under the WIA91 as a water and/or sewerage undertaker for a defined geographic area of England and Wales.

**CCWater:** The Consumer Council for Water.

**Certificate of adequacy:** A statement from the licensee that it continues to have adequate resources and competencies to meet the obligations in its water supply and sewerage licence for at least 12 months.

**Drinking water safety plans:** Preventative plans encompassing all steps in water protection from catchment to the consumer. See DWI Information letter 06/2004 (available on DWI's website) for more information.

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

**EA:** The Environmental Agency, an executive, non-departmental government body that has a statutory duty to protect and enhance the environment in England.

**Instrument of Appointment:** An appointment made by the Secretary of State or the Authority for a company to provide water or sewerage services in part of England or Wales. The Instrument of Appointment imposes conditions on the relevant appointed company which Ofwat enforces.

**Licence application notice:** the notice issued by Ofwat under section 17F of the WIA91 (as amended by the WA14).

**Licensee:** The holder of a water supply licence and / or sewerage licence.

**Memorandum of Understanding:** A formal agreement between two or more parties.

**NRW:** Natural Resources Body for Wales, is a Welsh Government sponsored body, responsible for the management of the natural resources of Wales.

**Ofwat:** The Water Services Regulation Authority.

**Restricted retail authorisation:** An authorisation in the water supply licence that allows the licence to use the supply system of an appointed water company that is wholly or mainly in Wales for the purpose of supplying retail services to eligible premises that use 50 megalitres or more water a year (Schedule 2A WIA91).

**Retail authorisation:** An authorisation in the water supply or sewerage licence that allows the licensee to use the system of an appointed water company and the sewerage system of an appointed sewerage company that is wholly or mainly in England for the purpose of supplying retail services to eligible premises (Schedules 2A and 2B WIA91).

**Sewerage system:** (see section 17BA(7) as inserted by section 4 of WA14).

**Scottish licence:** means a licence granted by the WICS pursuant to the Water Services etc (Scotland) Act 2005.

**Standard Conditions of the WSSL:** The standard terms and conditions of Water Supply and Sewerage Licence published by the Secretary of State (for Environment, Food and Rural Affairs) pursuant to sections 17H and 17HA of the WIA91.

**Self-Supply Licensee:** A customer with a WSSL that provides retail services to its own premises and/or those of its associates in the areas of appointed companies wholly or mainly in England (for example, subsidiaries or partners).

**Sensitive customer:** Defined in Standard Condition 6 as a vulnerable non-household customer, including any non-household customer for eligible premises occupied by the sick; the elderly; the disabled; or other vulnerable sections of the population; and/or which is a hospital; or a school.

**Supply system:** as defined in section 17B of the WIA91, as amended from time to time.

**WA14:** Water Act 2014

**WIA91:** Water Industry Act 1991

**WICS:** the Water Industry Commission for Scotland

**WSSL:** Water Supply and Sewerage Licences as defined in the WIA91 (as amended by the WA14).

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

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Printed on 75% minimum de-inked post-consumer waste paper.  
January 2016

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