

Application process for water and sewerage licences – retail market opening for non-household customers: a consultation

About this document

This document provides an opportunity for anyone who is interested in applying for a water supply and/ or sewerage licence(s) for retail services (collectively referred to as WSSLs and either one of them as a WSSL as the context requires) to comment on the details of the future application process for these licences. Following this consultation, we will publish the necessary documents in March 2016 ahead of the opening of the application process in April 2016.

As part of the consultation process, there will be a workshop on the afternoon of Monday 8 February in London to provide an opportunity for further discussion or questions about the intended process. Details of the workshop will be published on the Ofwat website and circulated to respondents to previous licensing consultations.

This consultation covers three documents that together describe the future application process:

- Licence Application Notice: Section 17F of the Water Industry Act 1991 ('WIA91'), (as amended by the Water Act 2014 ('WA14')), requires Ofwat to publish a notice of determination in such a manner as it thinks appropriate to bring the application process to the attention of those affected. The notice also provides details of the application fee to be paid.
- Application Form: This sets out the specific questions that applicants must answer and the documents that they must submit, including a business plan, to make an application for a WSSL.
- Application Guidance: This provides potential applicants with information and guidance to assist them in making their application. The supporting narrative also provides some background on our assessment process and the indicative timescales involved.

Drafts of each of these documents are contained in appendices to this consultation document. This document follows on from our recent results document '[Consultation on licensing: results and decisions](#)' which was published on 9 December 2015. In that document, we summarised the thinking behind the revised application process.

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Responding to this consultation

We welcome your responses to this consultation by Friday 26 February 2016. Please submit email responses to retaillicensing@ofwat.gsi.gov.uk, or post them to:

Retail Market Opening Programme
Ofwat
21 Bloomsbury Street
London WC1B 3HF.

If you wish to discuss any aspect of this document, please contact Chris Daly on 0121 644 7786 or by email at chris.daly@ofwat.gsi.gov.uk.

We will publish responses to this consultation on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004.

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory 'Code of Practice' which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

1. The importance of licences and the new market

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 ('undertakers').

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 requirement¹.

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

¹ The total quantity of water estimated to be supplied to the premises annually by the licensee is not less than 5 megalitres (MI)³ 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.

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”.

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.

Once relevant regulations are enacted for the first time, it will be possible for retailers to make a single application for a WSSL in England and/or Wales and the equivalent Scottish water services and sewerage services licences (“Scottish Licences”) in Scotland. Ofwat and WICS are currently finalising their detailed proposals for the processing of such applications and will provide further information on these shortly. After such an application has been made, the assessment process and granting of WSSL(s) and Scottish Licence(s) will remain separate.

The new market is expected to deliver [about £200 million of overall benefits](#) to customers and the UK economy and research shows that seven out of ten non-household customers want this choice.

Customers will be able to shop around and switch to the best deal. Investors and retailers will have new opportunities for growth. And [the environment will benefit from customers using new water efficiency services](#). Customers are already benefiting from [a similar market in Scotland](#).

Opening the new market is complex but it is [on track to open in April 2017](#). The design is almost complete, and work is now being carried out to deliver the technical systems, checks and ways of working that are needed to get the market right for customers. A key element of this are the licensing arrangements to support the new market.

2. The application process consultation

This consultation provides all stakeholders with the opportunity to comment on our proposed process for applications for future retail water supply and sewerage licences. The consultation paper is structured as followed:

- Firstly, to assist stakeholders who may be less familiar with the work on retail market opening and the new market arrangements that have been developed, we provide summary background information on the new legal framework within which the retail licences will sit;
- We then provide confirmation of the scope of this consultation, most notably that this is focused on applications for retail licences, and we also comment on the proposed arrangements for existing holders of WSLs;
- Finally, we introduce the new documents which will govern the new WSSL application process and identify a number of questions on which we are seeking responses.

The suite of draft application documents on which we are seeking feedback are set out in the Appendices.

We summarised our proposed approach in developing the application process in our consultation on licensing and policy changes required for non-household ('NHH') retail market opening, which we concluded on in December 2015. We have developed the application process for the WSSL by evolving the existing process for the WSL. This has sought to build on what works well from the existing application process to keep the approach as simple as possible.

3. Further information on the new market arrangements

The new market will rely on a new [legal framework](#) – ranging from legislation to non-statutory guidance. Ofwat recently published an overview of this legal framework within which the licensing and application requirements sit.

The new market arrangements are described in a number of documents developed by the Open Water Programme. The main detail is set out in two new market codes governing interactions in the market. These market codes are a key part of ensuring that retailers do not have to negotiate different access arrangements with each wholesaler:

- The **Wholesale Retail Code (WRC)** governs the interactions between undertakers (who operate water and/ or sewerage systems) and licensees (who use those systems to supply water to eligible customers) setting out the rules (including business terms, operational terms and market terms) which are to apply to agreements ('wholesale contracts'). This is a statutory code that will be issued, and will ultimately be enforceable, by Ofwat under the WIA91.
- The **Market Arrangements Code (MAC)** is a non-statutory code, to be established by conditions in the WSSLs and the Instruments of Appointment of undertakers. It will set up arrangement for how the market will be organised and governed, including the setting up of a panel to help oversee the codes and any changes to these. Licensees and undertakers will also be responsible for the establishment of a Market Operator, (to administer the market) and become members of it.

For a more detailed summary of the new market codes, please see the technical appendix to the MAP on the Open Water website².

In addition to the WRC and the MAC, there will be three further codes published by Ofwat with which licence holders will need to comply:

- The **Interim Supply Code** is a statutory code that will regulate what happens to the customers of a licensee which ceases to supply them in certain circumstances (including where its licence has been revoked). It will establish

² <http://www.open-water.org.uk/download-documents/>

processes for other licensees to make themselves available to act as interim suppliers, and to be allocated some or all of the affected customers of the previous licensee. It may also set out the terms and conditions under which any interim supply is provided and include requirements for the timely provision of information to affected customers. [We consulted](#) on policy matters relating to the interim supply arrangements in October 2015 and we expect to issue a further consultation on the draft Interim Supply Code in February 2016.

- The **Retail Exit Code** is a code which we expect to be required under Defra's proposed exit regulations. It is proposed that it will set out rules regarding the terms and conditions which will be contained in schemes which will apply to the arrangement between customers and a licensee when customers are transferred to an eligible licensee in an exit area (i.e. an area where the undertaker has exited the retail market) in the absence of a negotiated contract. [Our consultation](#) on customer protection issues in October 2015 set out our initial considerations in relation to this code and we plan to consult on the draft retail exit code in February 2016.
- The **Customer Protection Code of Practice** is expected to be established containing a range of customer protection obligations. [Our consultation](#) paper on protecting customers in the non-household retail market sets out our proposals for this. Stakeholders have recently responded to this and we expect to be able to consult on a draft customer protection code of practice together with our final proposals in March 2016.

Overall, there are many important interactions between the licence discussed in this document and the market rules and codes listed above.

In their responses to questions about the managerial, financial and technical competencies that form the core of the application assessment process, applicants will need to be able to demonstrate their understanding of these rules and codes. It is also a requirement of the licence application process that applicants have passed the market entry accession certification process undertaken by MOSL before a licence can be granted.

4. Scope and approach of this consultation

In this section, we set out the approach that we have taken in reaching the decisions to date on the application process, as well as some outstanding issues which limit the scope of the of process on which we are consulting. We also set out further information on our approach for current holders of WSLs as well as information on fees.

Outcome of our consultation on application process

Our June 2015 consultation on licensing and policy issues relating to retail market opening set out our proposals for developing the application process for the new market arrangements. The basis of our proposals was to amend the existing process for WSL applications to take into account new market arrangements. We set out our decisions on these proposals in December 2015. The table below highlights these decisions with regards to the application process:

Proposal	Decision
We would follow similar assessment considerations based on managerial, financial and technical competencies	Given the general agreement to the consultation proposals, we have developed the details of the application process using these competencies as the basis of our assessment
Granting the licence should be conditional on passing market assurance testing	Licence grant is conditional on passing market entry assurance certification
Applicants should be required to submit a completed certificate of adequacy with a licence application	Applicants must submit a completed certificate of adequacy with their application. The form of certificate has changed slightly to allow for applicants who are not limited companies.
The Environment Agency should be included in the assessment of sewerage applications	We have worked closely with the Drinking Water Inspectorate, the Environment Agency and Natural Resources Wales to develop the details of the technical competency testing
The sponsor role should be maintained, limited or removed	We have removed the role of sponsor as no respondents thought that it added value for applicants and there were

	a number of concerns about customer protection impacts
Proposal to include coverage of customer facing systems in the managerial competency test	We have included one question regarding customer facing systems in the competency tests and ensured that this is proportional for different scales of business

The decisions we have taken are translated into the application guidance and form which are set out in the appendices to this consultation.

Whilst we have made the decisions above, there some important limitations in the status and scope of the application process that we haven't concluded on, which we highlight below.

Status and scope of this application process

There are five points concerning the status and scope of the application process covered in this consultation of which readers should be aware:

- 1) Defra's consultation on standard licence conditions for the WSSL has not concluded

To provide the earliest visibility of what the application process is likely to contain, we have published this consultation before we have been able to review all the responses to Defra's consultation on the standard conditions of the licence. Although we think it unlikely, in the event that the results of that consultation process identify the need for substantial changes to the licence, we may need to issue a revised version of this consultation and extend the consultation period.

- 2) This consultation relates only to retail and restricted retail authorisations

The application process described in the documents covered by this consultation relates to retail and restricted retail authorisations only. The documents will be extended once we have reached decisions about the approach for wholesale authorisations, supplementary authorisations and disposal authorisations as well as the combined supply element of the current WSL.

As we explained in our December results document, we are discussing with Defra the process to revoke the WSL as well as to transition the necessary elements of the current supplementary authorisation of the WSL (the combined licence). The

supplementary authorisation element of the WSL has not been within our focus other than to ensure that those companies with existing combined supply licences are still able to offer customers equivalent offerings. We understand that WSL holders do not currently actively use the supplementary powers. The Water 2020 Programme is developing proposals for future wholesale arrangements, and is considering how the supplementary authorisation and associated licence conditions will be developed in line with those plans. We plan to give clarity on the process and timing for replacing WSL combined supply licences no later than April 2016.

3) Self-supply is not addressed in detail

This version of the application process documents provides only limited coverage of self-supply licences. This is because the Defra consultation on standard licence conditions has not concluded. Once the consultation on these conditions has concluded it will be possible to complete the details of the licence for self-supply. This will include confirming which obligations will be applicable for self-supply licensees. We plan to develop the associated application process for self-supply licences following this, although we do not expect there to be major differences in that process, compared to the process described in this consultation.

4) The guidance document is intended to cover the period up to market opening in April 2017

The guidance document will be refreshed at the point of market opening to make any changes that are necessary to reflect the enduring market arrangements.

5) This consultation does not cover in detail the form, content and process for joint applications for a WSSL in England and/or Wales and the equivalent Scottish water services and sewerage services licences (“Scottish Licences”) in Scotland.

When relevant regulations under sections 17FA and 17FB WIA91 are enacted, it will be possible for applications for a Scottish Licence to be treated as an application for a WSSL and vice versa subject to certain conditions. Ofwat and WICS are currently finalising their detailed proposals for the processing of such applications and will provide further information on these shortly. After such an application has been made, the assessment process and granting of WSSL(s) and Scottish Licence(s) will remain separate.

Applications for WSSLs from holders of WSLs

In the consultation document on the licensing arrangements for the new market published in June 2015, we explained that we would require holders of the existing

WSLs to apply for the new WSSLs. Although the standard conditions to be contained in the new WSSL are based on the standard conditions of the WSL, there are still important differences, particularly when wider market arrangements are taken into consideration, notably in regards to the scope of the licences which may cover sewerage retail services as well as water retail services, the scope of the market (which will allow supply to a much large group of eligible non-household customers) and the new central market system, rules and procedures.

We have considered whether it would be possible and appropriate simply to allow existing licence holders to be “given” a modified water retail licence. However, this would mean that they had not been assessed against the obligations of the new licence and the revised application process, raising questions about customer protection. As a result, we concluded that it is necessary to ask current licence holders to apply for either or both of the new retail licences that they wish to hold.

We have considered further the extent to which the application process for existing applicants can be streamlined. Foremost in our thinking has been the need to ensure that applications are based on current business plans relevant to the new market. A number of the current licence holders have held their licences for close to a decade. Since their original applications could not have anticipated the new market and a long period of time has passed, we think that it would be unsafe to place reliance on their original plans.

We also recognise that a number of current licence holders have applied within the last two years and after it became apparent that the new market would come into being. So, in those cases, it will be acceptable for applicants to base their submitted business plans on those originally submitted - providing of course that it remains up to date. So for example, if an applicant was now considering becoming a recipient for retail exit and hence providing retail services to a much larger number of customers, this should be reflected in the business plan submitted with the application as well as the completed certificate of adequacy that must be provided.

With regards to the other areas of the application, we have concluded that it will deliver more robust and uniform customer protection if all applicants complete the same application form. The new market has important differences from the existing arrangements including substantial new market codes, and we do want to ensure that all applicants are familiar with those. Given the nature of the application process, we do not believe that this imposes a substantial burden on applicants and we would be most surprised if any existing WSL holders found the application process for the new licence unduly onerous.

Our application fees

The application fee of £5,250 reflects the costs incurred by Ofwat to undertake the necessary assessments and run the associated public consultation. In determining the fee, we have undertaken an activity based costing assessment of our cost in processing applications. The cost is similar for each type of application, and so the fee of £5,250 will be the same regardless of type of application.

We did also contemplate a discount to the application fee for existing WSL holders. However, after further consideration, we have concluded that this is not appropriate. Even where an applicant is able to adapt the business plan previously submitted, the Ofwat assessment team will need to undertake similar checks on the overall application pack as for other applications and so the costs that are incurred will be similar.

5. Considering your views

This consultation follows on from other consultations on licensing. Our consultation on licensing and policy changes required for NHH retail market opening, which we concluded on in December 2015 by publishing our results and decisions, highlighted a number of key deliverables required for the licensing application process.

The process which we have developed is covered in three appendix documents. After the consultation period, we plan to formally issue these documents ahead of April 2016 when prospective licensees can start to apply. These documents are:

1. Application notice

Under Section 17F of the Water Industry Act 1991, subsequently amended by the Water Act 2014, Ofwat is required to publish a Licence Application Notice for the application process.

2. Application form

This sets out the specific questions that applicants must answer and also the additional enclosures that they must include with their application (including the necessary business plan and payment of the application fee(s)).

The guidance may be used to help applicants complete the form.

3. Application guidance

This provides potential applicants with information and guidance to assist them in making their application.

We seek stakeholder feedback on each of these documents. In particular, we highlight a number of questions below on which we seek views.

Questions for stakeholders

1. Do you have any comments or suggestions about the draft Licence Application Notice included in Appendix 1?
2. Do you have any comments or suggestions about the draft application form included in Appendix 2?

3. Does the draft application guidance in Appendix 3 provide sufficient detail for applicants to apply for a water supply and/or sewerage licence with retail and/or restricted retail authorisations?
4. Have you any suggestions for elements of guidance that are missing, or alternatively that are not required, in the draft application guidance?

This consultation is designed to provide us with feedback on our intended process for applicants for the future retail market. We welcome responses from stakeholder until Friday 26th February. Potential applicants will be able to apply for a licence from April 2016. We intend that the suite of documents in the appendix will be formally issued in March.

As part of the consultation process, there will be a workshop on the afternoon of Monday February 8th in London to provide an opportunity for further discussion or questions about the intended process. Details of the workshop will be published on the Ofwat website and circulated to respondents to previous licensing consultations.

Appendix: Application documents

The appendix contains the suite of documents which we intend to formally issue in March 2016.

Appendix 1: Application notice

Under Section 17F of the Water Industry Act 1991, subsequently amended by the Water Act 2014, Ofwat is required to publish a notice of its determined application process.

[Draft licence application notice for water and sewerage licences](#)

Appendix 2: Application form

The applicant will be required to complete this and return it to us along with additional enclosures and fees.

[Draft licence application form for water and sewerage licences](#)

Appendix 3: Application guidance

This provides potential applicants with information to support them in making the application. This supporting narrative provides background on our process, and detail on information requirements and assessment.

[Application process for water and sewerage licences – retail market opening for non-household customers: draft guidance](#)

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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