

Priority changes to Instruments of Appointment and Water Supply Licences for non-household retail market opening - consultation

Southern Water's Response

February 2016



Southern Water's response to the priority changes to Instruments of Appointment and Water Supply Licences

We welcome the opportunity to respond to the priority changes proposed to the Instrument of Appointment and set out our response to the specific questions below:

Q1: Do you agree with the proposed drafting changes to the IoA and WSL in removing the in-area trading ban? If not, explain why not and your proposed alternatives.

We agree with the proposed drafting changes to the IoA and WSL in removing the in-area trading ban.

Q2: Do you agree with the proposed new readiness condition to be added to the IoA and WSL? If not, please explain why not and include your proposed alternatives.

We do not agree with the proposed new readiness condition. As expressed by the majority of undertakers in response to your previous consultation, we do not believe there is a requirement for such a condition, as there are already strong reputational incentives on companies to prepare for market opening. This condition also duplicates the obligations on companies required through the extensive market and company readiness governance and assurance processes. This includes three Board level letters of assurance, periodic iterative market readiness assessment and market entry assurance certification, which involves market training, business solution assessment, interface and data transaction testing and market scenario testing.

Furthermore, the current proposed condition as drafted is unacceptable due to the following issues:

- The drafting is overly general and significantly onerous in stating that companies shall take steps "as are within its power" which is a high threshold with no limitation on costs.
- The drafting is too broad and does not refer to the non-household retail market, due to open in April 2017, but refers to the more general opening of the "Competitive Market" with expiry of the condition on the "Go Live date" which is defined as the date when the Competitive Market opens.
- The reference to company assurance and readiness plans, eligible data format and accuracy, and testing of systems and processes simply duplicates the market assurance and entry certification obligations.
- The data quality requirement on completeness and accuracy is absolute and undefined.

- The condition does not identify the risks from third party delivery, such as the delay in deliverables from MOSL which are on the critical path of our readiness programme. Such dependencies have a substantial risk on the delivery of our market readiness and therefore achievement of this proposed readiness condition.

We do not believe that there is a need for a new readiness condition and could not agree to such a condition as currently drafted.

If such a condition is included then, as a minimum, it would need to be modified in the way set out below:

CONDITION [Z]: RETAIL MARKET OPENING

1.2 General Obligations

The [Licensee][Appointee] shall take such **reasonable** steps and do such things as are within its power and which are or may be necessary ~~or expedient~~ to ensure that it is ready for the opening of the Competitive Market on and from the Go Live Date including, without limitation:-

(a) developing company specific market assurance and readiness plans;

(b) identifying and gathering relevant data in relation to all Eligible Premises and supply points [to which it currently provides services][in its area], ensuring this data is **accurate to the best of the company's knowledge and belief** and ensuring it is in a form capable of being transferred to any central systems and/or any market operator established to operate the Competitive Market; and

(c) testing and trialling any systems and processes to be put in place for the Competitive Market,

1.3 Expiry of this Condition

This condition shall cease to have effect on the Go Live Date or such earlier date as the Authority may specify in a direction for the purposes of this condition generally.

1.4 Interpretation

In this Condition:

“Competitive Market” means the provision of retail water and sewerage services to **non-household** Eligible Premises

“Go Live date” means the date determined by the Secretary of State as the date when Competitive Market opens

Q3: Do you have any comments about the use of existing s13 and s17J Water Industry Act 1991 (WIA91) powers to introduce the new readiness condition?

We would prefer to introduce any such condition through consensus using s13 of the WIA91. As currently drafted the obligations are absolute and would require our Board to sign up to unreasonable conditions, such as unqualified data accuracy and completeness, and therefore, we would need the condition to be amended prior to any such consent.