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Trust in water

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

**ofwat**

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## About this document

On the 28 January 2016, we published a consultation on the licence application notice, application form and application guidance document that we intend to use when the application process for the water supply and/ or sewerage licence(s) for retail services (collectively referred to as WSSLs) opens in April 2016. In support of the consultation, a workshop was held in London on 8 February 2016.

There were around 30 attendees at the workshop, and we received 12 responses to the consultation. This document summarises the responses that we have received and explains how we have reflected the points made in the application process and documents.

In addition to the points raised via the consultation, we also explain the changes made as a result of the decision by MOSL to introduce transferable certification in the market entry assurance process. This issue arose after the consultation had been published.

The opening of the licence application process will be an important milestone towards market opening in April 2017. 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.

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## 1. Executive Summary

This document sets out our conclusions on the WSSL application process.

In January 2016 we consulted on the WSSL application process, we received 12 responses to the consultation. Taking these responses into account we have amended the application process to include:

- a one page summary of the business plan completed by the applicant, that will be used in the public consultation process to protect commercial confidentiality of the full business plan;
- clarification that we expect applicants to describe their future intentions with our assessment focused on the quality and completeness of the explanation;
- additional guidance that we would have no objection to applicants making use of relevant documents, or extracts of documents, that may have been prepared for the MOSL market entry assurance certification process.
- additional questions to accommodate the decision by MOSL to introduce transferable certification in the market entry assurance process, which will allow incumbent retailers to transfer certification to an associate retailer; and
- an additional question on whether the applicant intends to seek market entry assurance certification for the use of the low or high volume interface to help ensure that the scale of plans set out in the licence application process is consistent with the interface capability.

We intend to open the WSSL application process on 5 April 2016.

The application process will initially be for retail WSSLs only. We intend to publish a self-supply WSSL in April 2016, which will allow retailers to supply their own sites and those persons associated with them. This will also highlight any intended changes to the application process for self-supply.

We will publish an information note on combined supply by the end of March 2016. Combined supply is the supplementary authorisation under the current licensing regime which allows licensees to provide retail services, and introduce water into a water undertaker's supply system in prescribed circumstances. This information note will provide further information on the approach and timeline that Ofwat intend to follow regarding the transition to future arrangements for combined supplies.

We will also publish details of the cross-border application process as soon as these are available. We hope that this will be by the end of March 2016.

## **2. Consultation responses and changes to the application process**

### **2.1 Introduction**

Although responses raised a small number of important issues, there was also substantial support for the proposals, including a number of positive comments on the quality and clarity of the proposed process and the draft documents.

Responses highlighted four issues of concerns:

1. Commercial confidentiality of submitted business plans must not be compromised;
2. The practical implications of applications almost 12-months ahead of market opening;
3. Perceptions that there may be unnecessary overlap with the MOSL market entry assurance process; and
4. Concerns that there may be a circularity with the MOSL process and/or questions on detailed timing matters.

The following sections set out these concerns in more detail and the changes that we have made to the application process. It also sets out the changes that we are making to the process to accommodate the decision by MOSL to introduce transferable certification in the market entry assurance process, which arose after the start of the consultation process.

### **2.2 Commercial confidentiality**

#### **2.2.1 Consultation responses**

Over half of the responses highlighted concerns on the confidentiality of the submitted business plans in the context of a competitive market. These covered questions on what would be published as part of the consultation process; what information Ofwat would share with other regulators and how this would be handled; and what would happen in the event that Ofwat were to receive a Freedom of Information Act (FOIA) request about the applications.

## **2.2.2 Changes to the application process**

We understand the concerns around commercial confidentiality. In response we have clarified how the consultation process will be run within the application guidance document. The consultation will contain only the information on a one-page pro-forma to be completed by applicants.

The pro-forma contains name, address and parent company (if applicable), plus a brief synopsis of the business plan such as the services that the applicant intends to provide. As the applicants themselves will complete this, they can ensure that they are comfortable with the details that it contains. The one-page is in addition to the business plan, not instead of it.

As part of the assessment process we will share all of the information provided by applicants with the Drinking Water Inspectorate (DWI), Environment Agency (EA) and Natural Resources Wales (NRW). Within the work to plan the application process, we have reminded other regulators of the commercial confidentiality of some of the information included in the application process such as business plans.

Finally, in regard to information requests, primarily under the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004, we may be required to publish or disclose information in accordance with this legislation. If the applicant considers that information provided should be treated as confidential they should explain to Ofwat why this is the case. If we receive a request for disclosure of the information we will take into account the representations provided, but we cannot give an assurance that we can maintain confidentiality in all circumstance.

The changes in the application guidance can be found in Section 2.5 of the application guidance document.

## **2.3 Practical implications of applications 12-months ahead of market opening**

### **2.3.1 Consultation responses**

A number of responses noted that since market opening was still a year away, some of the questions could only be answered by explaining future plans rather than the current situation. Respondents raised queries on whether this was likely to be acceptable.

### **2.3.2 Changes to the application process**

The application process is undertaken at a specific point in time and considers plans over a three-year period, so there will always be an element of “future tense” in the evidence. The issue is exacerbated by the necessary sequencing of events ahead of market opening.

During the period ahead of market opening Ofwat will, within reason, take a pragmatic approach in respect of applicants having to describe their future intentions rather than the existing situation. Our focus will be on the quality and completeness of the explanation provided on future intentions. However, we will not be able to accept responses that effectively state that “we have not thought about that yet”.

This clarification can be found in the introduction to Section 3 in the application guidance document.

## **2.4 Perceptions of overlap with MOSL entry assurance process**

### **2.4.1 Consultation responses**

A small number of responses suggested that there may be unnecessary overlap with the MOSL market entry assurance process, especially around the Business Solution Assessment (BSA) element proposed by MOSL. It was suggested that this overlap should be removed by streamlining the licence application process.

### **2.4.2 Changes to the application process**

The development of the application process has run ahead of the design thinking on the BSA. As a result, there is an element of similarity in some of the questions, but there are also some important differences.

The focus of the BSA is about the capability to interact with the market. Through the application process we are interested in the capability to meet all the relevant market requirements – which is somewhat broader. So although the questions and the answers to them will be related, they are not exactly the same.

We have introduced an additional element of guidance around this:

If the applicant would find it helpful, Ofwat have no objection to them making use of relevant documents, or extracts of documents, that may have been prepared for the MOSL Market Entry Assurance Certification Process to support their answers to these questions. However, applicants should ensure that the documents do directly address the requirements set out here and ensure that they are effectively cross-referenced. So for example, it is unlikely that an answer that said simply “see accompanying document” would be sufficient. We would expect a short narrative explaining what this document was and how the evidence therein addressed the requirements set out here.

This additional guidance can be found in section 3.2.2 of the application guidance document.

## **2.5 Concerns of a circularity or detailed timing questions**

### **2.5.1 Consultation responses**

A small number of responses expressed concern that there may be an unintended circularity between the licence application and market entry assurance that would make it impossible for licences to be awarded. There were also requests for further detail on the expected timings.

### **2.5.2 Changes to the application process**

There are two points of planned interaction with the MOSL process. Firstly, once we have received an application and checked that it is complete, Ofwat can give confirmation to MOSL that a trading applicant has applied for a licence when requested to do so. (Since undertakers already hold Appointments, this will only be relevant for trading applications made by non-undertakers).

The licence application process then proceeds through necessary assessments, including the public consultation and the inputs from other regulators. Assuming that we are satisfied that the application meets the necessary requirements, we will inform the applicant that we are minded to grant the licence. The actual grant will take place after the second planned interaction, when MOSL provide confirmation to Ofwat that the market entry assurance process has been passed.



So to summarise, applicants can receive a licence only once they have passed market entry assurance. However, that is not a circularity, it is the designed policy intent to ensure that licence holders have the capabilities and skills to operate in the market.

Regarding queries on detailed timing, we intend to open the licence application process on the 5 April 2016. The first task will be to check that valid applications have been received and confirm this is the case to MOSL when requested to do so.

As explained in the guidance document, we expect the assessment process to take up to 12 weeks including the period of public consultation. In the event that applicants cannot answer any questions promptly, applications may take longer.

At the “minded to grant” stage, we expect to review the results of assessments in a rolling series of small batches and inform applicants of the outcomes as soon as possible. Our understanding is that for all trading applications received before the 30<sup>th</sup> of June, MOSL expect to complete market entry assurance ahead of the opening of shadow operations sometime in the second half of September. Once MOSL confirm that WSSL applicants have passed market entry assurance, we envisage a “bulk signing” of licences at this point. We will confirm the exact timing of this once we have received confirmation on timings from MOSL.

Applicants can apply for licences at any time on or after 5 April 2016. As set out on the published integrated market opening plan, if applicants wish to get confirmation that they would be granted a WSSL prior to opening of the exit application process, they must apply for a licence by the end of June. In practice, the effective deadline for applicants for a WSSL will be when they wish to submit their trading application to MOSL since where relevant, MOSL will check with Ofwat that a WSSL has been applied for.

## **2.6 MOSL transferable certification**

There is an unavoidable sequencing issue between market entry assurance certification (MEAC) and applications for retail exit. The timing of exit applications means that an incumbent retailer (i.e. one that is part of an undertaker) must have already passed MEAC and entered the shadow market before they can apply for exit. Since retailers who wish to be nominated as an acquiring licensee in an exit application must already hold their licence, they must also pass MEAC. So absent any alternative solution, companies who are exiting to an associate licensee would have to go through MEAC multiple times.

To avoid this MOSL have decided to allow the transfer of certification from an “incumbent retailer” to an associate retailer who will make use of the certified capability for operation in the live market.

Where an applicant intends to make use of transferable certification, it must explain this in the response to an additional question that we have introduced. Applicants are asked to explain the circumstances behind this approach, together with the expected timing and details of the transfer. The response should also explain the steps that the applicant plans to ensure that the transfer will be effective (e.g. the quality and breadth of capability will be as expected) and reliable (e.g. that the applicant will have control of the capability). Applicants should also comment on their contingency plans in the event that the transfer did not proceed as planned as well as how they will ensure that their Certificate of Adequacy remains valid.

We have also included a further question to seek confirmation on whether the applicant intends to seek market entry assurance certification for the use of the low or high volume interface. This is to help ensure that the scale of plans set out in the licence application process is consistent with the interface capability.

These changes are explained in and around a new sub-section in the application guidance document, section 3.2.5.

## **3. Next steps**

### **3.1 Opening of the application process**

We understand that the legislative changes covering the revised application process will become effective on 1 April 2016, and we intend to publish the licence application notice following this on Monday 4 April. The application process should then "open for business" on 5 April 2016.

Alongside this results document, we are publishing the updated guidance document and application form. This will assist potential applicants in making their preparations to submit an application, but the process itself will not commence until after 4 April.

### **3.2 Scope of the application guidance**

#### **3.2.1 Combined supply**

As set out in the January consultation document, at present, the application guidance provides for retail and restricted retail authorisations only. We will publish an information note regarding combined supply by the end of March 2016. This will set out our thinking about how combined supplies will be dealt with in future, together with an explanation of what this will mean for applications for the new equivalent of combined supply.

#### **3.2.2 Self-supply**

In early April, Ofwat will also publish details of the new WSSL for self-suppliers and explain how this differs from the standard WSSL. We will also explain how the application process for self-supply licences will differ from the process described here. We expect the differences to be minor.

#### **3.2.3 Cross border applications**

Once Ofwat and WICS have concluded the on-going work on the process to deal with cross-border applications, details of this will be published on the Ofwat website. We hope that this will also be before the end of March.