

WATER SERVICES REGULATION AUTHORITY (OFWAT)

Modification of the Conditions of Appointment of [Undertaker] as a water undertaker

On 3 March 2016, Ofwat issued notice of its proposal to modify the conditions of appointment of [Undertaker] as a water undertaker. The notice (issued under section 13 of the Water Industry Act 1991) can be viewed [here](#).

This notice confirms Ofwat has modified appointment condition R, paragraph 5(1) of [Undertaker]'s appointment as set out in the Schedule below. The company agreed to the modification which was set out in the section 13 notice. The modification had effect from 19 May 2016.

The modified conditions of appointment for [Undertaker] can be viewed on our website. The background and the reasons for the modification are set out below.

Background and reasons for the modification

The in-area trading ban (IATB) prevented licensed water suppliers (licensees) from trading with a related undertaker, or carrying out relevant activities in the area to which the water undertaker's appointment relates. Relevant activities included any activities authorised by a water supply licence. Licensees that were related to an undertaker could only supply business and other non-domestic customers outside that undertaker's geographic area.

For the reasons set out below we have modified condition R, paragraph 5(1), of the conditions of appointment of [Undertaker] (and all other undertakers) to implement the removal of the IATB. We have also modified the standard licence conditions of water supply licences (WSL). This will allow related appointees and licensees to trade in the relevant area of appointment.

(1) The IATB is no longer required by statute

The Water Act 2003 (WA03) placed a statutory duty on both Ministers and Ofwat to ensure that licensees did not carry on any activities in the area of undertakers with whom they were connected. The ban was introduced to prevent incumbent companies dominating the newly competitive sectors of the non-household retail market. The statutory duty in the WA03 was subsequently repealed by the Enterprise and Regulatory Reform Act 2013 (ERRA13).

(2) The removal of the in area trading ban allows the realisation of the market design envisaged by the Water Act 2014

The Water Act 2014 (WA14) will remove the consumption threshold in the non-household retail market and allow all eligible customers to choose their supplier of water and wastewater retail services from April 2017. In this market, holders of the new Water and Sewerage Supply Licences (WSSL) will be able to compete to provide nation-wide retail services. The introduction by Ofwat of separate wholesale and retail price limits and a number of the reforms included in the WA14 will create greater transparency and so reduce the potential for discriminatory behaviour. Following these reforms, the IATB could place associated licensees at a potential disadvantage to their competitors. Removing the IATB from the standard licence conditions of the WSL and from the conditions of appointment of undertakers will allow all licensees to provide national services leading up to April 2017.

(3) Removing the IATB prior to the opening of the new market helps to ensure that wholesalers and retailers can complete the necessary preparations in time for market opening

The modification will allow both retailers and wholesalers to prepare for market opening in April 2017 by removing restrictions on operations for appointees with associated licensees. If the IATB had remained in place, retail associates of undertakers would have been unable to provide a national service to current eligible customers¹ between now and April 2017. Early removal of

¹ i.e. (a) those who use the supply system of an undertaker whose area is wholly or mainly England and to whom the total quantity of water estimated to be supplied annually by the licensee is not less than 5 Ml; and (b) those whose use the supply system of an

the IATB provides clarity to undertakers and should allow them to make decisions such as whether to enter into an outsourcing agreement to allow their related licensee to take responsibility for making the necessary preparations for market opening.

(4) Removing the IATB prior to the opening of the new market will remove uncertainty in relation to undertakers exiting the retail market

Continuation of a ban could have acted as a barrier to retail exit, and we believe that it is important that undertakers are able to choose this option if they wish to do so. The removal of the ban ahead of market opening also lowers transition costs by avoiding the need for both undertakers and associated licensees to separately undertake preparatory activities for the new market. One way for an undertaker and licensee to minimise the risks and reduce the costs associated with making the transition towards an exit, prior to receiving confirmation that an exit application to the Secretary of State has been successful, would be to establish an outsourcing agreement allowing the licensee to take responsibility for making the necessary preparations for engagement in the national retail market. This could have the joint benefits of smoothing any transition for customers by ensuring that systems are prepared well in advance of a transfer; and avoiding the need to duplicate the activity required for market readiness. This could help to manage any risks around uncertainty for undertakers that want to exit at market opening. It could also simplify matters for undertakers that do not wish to exit but do wish to outsource their in-area non-household retail activities to an associated licensee.

Ends

Schedule

Modification of the Conditions of Appointment of [Undertaker] to remove the in-area trading ban