

## **WATER SERVICES REGULATION AUTHORITY (OFWAT)**

### **Modification of the Conditions of Appointment of [appointed undertaker whose area is wholly or mainly in Wales] as a water and sewerage undertaker**

On 3 March 2016, Ofwat issued notice of its proposal to modify the conditions of appointment of undertakers. The notice (issued under section 55 of the Water Act 2014) can be viewed [here](#) (the Section 55 Notice).

This notice confirms Ofwat has modified the conditions of appointment of [appointed undertaker] as set out in the modification annexed to this notice. The modification had effect from 3 August 2016.

The text of the modification is set out in the annex to this notice. The background and the reasons for the modification are set out below.

#### **Background and reasons for the modification**

The introduction of a readiness condition for companies to be ready for the opening of the new retail market in April 2017 creates a legally enforceable obligation, supporting the programme requirements around preparation and loading of data and other preparations for shadow operations as well as the Open Water Assurance Framework.

The condition requires all licensees and appointees to support the testing and trialling of the new market and also to take such steps as are within their power to ensure that they themselves are ready. The condition is principles based and we intend to apply it proportionately. The scale and nature of preparations required is largely determined by the number of eligible premises for which an appointee or licensee holds data and the business strategy that the appointee or licensee wishes to pursue.

Under section 55 of the Water Act 2014 (WA14) the Water Services Regulation Authority (Ofwat) may modify the conditions of an appointment and the conditions of a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 (WIA91) where it considers it necessary or expedient to do so in consequence of provision made by or under Part 1 of WA14.

Under section 55(8) of the WA14 the Welsh Ministers have directed Ofwat to modify the text of the proposed modification. The modification annexed to this notice reflects this direction.

For the reasons set out below we have modified the conditions of appointment of appointees whose areas are wholly or mainly in Wales to introduce a market readiness condition. Other than the additional text included pursuant to the direction of the Welsh Ministers referred to above, this is in the same terms as a modification made by Ofwat to the conditions of appointment of appointees whose areas are wholly or mainly in England, which Ofwat made on 27 May 2016. We have also modified the standard licence conditions of water supply licences (WSL) similarly. This will help to ensure that the market opens on time and can operate effectively by:

#### **(1) Creating an obligation on industry participants to take preparatory steps**

There are a number of steps that companies need to take prior to market opening to ensure that new market will function effectively. While we recognise that companies, both individually and collectively, believe that there are already incentives in place to ensure those steps are taken, we believe that without a formal obligation there is a risk that a small number of companies rely on the actions of others.

The failure of one or more participants to take the preparatory steps and to be ready could delay the opening of the entire market, particularly if that failure prevents the company concerned

from interacting with the market systems, making it difficult for customers to switch. As a result, it is important that companies have the same readiness condition and obligations.

(2) Creating collective confidence amongst industry participants

The condition will send important signals to companies that other companies are taking the steps they need to support effective market opening.

(3) Requiring companies to support the Open Water's assurance process

The condition will require companies to support the Open Water assurance process and also allows Ofwat to introduce additional assurance on companies' readiness.

(4) Creating confidence amongst customers that market will open on time

The condition will send an important signal to customers about the industry's collective commitment that the retail market will be ready on time.

In addition, the modification includes a further interpretation provision to those contained in the Section 55 Notice in relation to the terms "water supply licensee" and "sewerage licensee". This provision has been included to make it clear that these terms shall be construed in accordance with the provisions of Chapter 1A of Part 2 of the Act as they have been amended by the Water Act 2014.

**Ends**

**Modification of the Conditions of Appointment of [appointed undertaker] to Introduce the Market Readiness Condition**