

Northumbrian Water response to Retail market opening – further changes to all instruments of appointment: a consultation

Response due 31st May 2016

To: retaillicensing@ofwat.gsi.gov.uk

Consultation questions

Q1 Do you agree with the proposed new conditions summarised in Table 1.1? In your response, please provide comments on each of the proposed new conditions separately.

Table 1.1: Proposed new conditions

Condition & Proposed approach

Markets Arrangement Code condition

This will give effect to the MAC. As it is not a statutory code, we need to give effect to the MAC via the WSSLs and IoAs. A similar condition is already included in the WSSL standard conditions. We may need to make this change ahead of the other changes, as it is relevant to the establishment of the market operator.

Stapling condition

This will require integrated appointees (i.e. appointed companies with both wholesale and retail businesses) to comply with the provisions of the WRC, which governs the behaviour and interactions of wholesalers and retailers in the market

Customer Protection Code of Practice

This will require appointees to comply with the CPCoP, which we have recently consulted on. A similar condition is already included in the WSSL standard conditions

These new conditions make compliance with the market framework part of the licence obligations. As these codes are not statutory, the legal obligation is via the proposed licence conditions.

We support these in principle, whilst considering the drafting of the clauses.

Our only concern is with the wording in the Customer Code of Practice regarding back billing. So whilst we are happy to include this as a licence requirement, the wording of the CPCoP needs work.

The drafting of the paragraph for the MAC seems overly long compared to the drafting for the other elements.

We support the inclusion of the stapling condition.

Q2 Do you agree with the proposed changes to existing conditions as summarised in Table 1.2? In your response, please provide comments on each of the proposed changes separately.

Table 1.2: Proposed amendments to existing conditions

Condition & Proposed change

Terminology

Some changes to general terminology will be required to reflect the legislative changes

Agreed

Condition S To remove the CTP for the retail market, as it will be replaced by the new market arrangements set out in the MAC and WRC. Although it may still be required for the wholesale element of combined supply licences, at least for a transitional period

Agreed

Condition R 1-4 To remove the access code obligations, as the access codes will be replaced by the new market arrangements. These obligations may still be required for the wholesale element of combined supply licences, at least for a transitional period

Agreed

Condition F6 A.2A To create a new obligation for a separate certificate of adequacy for the non-household retail business of the appointee. We propose to carve this out of the existing obligation to have a certificate of adequacy for the whole appointed business

Agreed, but the drafting needs to be amended to make it clear that a company with wholesale and household retail businesses will not need a separate certificate for each.

Condition Q As the obligation to make drought payments relates to the appointee's role as a wholesaler, we propose to extend the obligation to make the payments to all affected business customers, regardless of whether they are customers of the appointee's own retail business or customers of a WSSL retailer. WSSL retailers would be required to pass on the payment to the customer in accordance with paragraph 2.4.3 of the business terms in the WRC

Agreed

Condition G To help to provide greater ease of reference for market participants about where their various obligations sit, we propose to restrict the application of this condition to residential customers, and move the obligations that are relevant to business customers somewhere else. We will consider whether the WRC, the CPCoP or a separate IoA condition would be most suitable for these purposes.

Agreed, but the final drafting will need to ensure both consistency and clarity over the terminology used and applicability of Condition G in respect of residential, domestic, and ineligible non-household customers.

Condition I We do not propose to amend this condition, but propose a change to the WRC instead, so that WSSL retailers are required to pass on any leakage adjustment to the affected customer

Agreed

Condition R7-9 We do not propose to change these obligations about information sharing between the appointee and licensees, but we propose to consider further whether any changes may be required to the WRC to address any inconsistencies or overlap with this condition

Noted

Condition F6 Condition F could be amended to insert the level playing field obligations that we propose in the Stapling Condition mentioned above.

Noted

Condition R5 In response to concerns raised during our previous consultation, we propose to retain these obligations for appointees to inform us of any changes in their relationship with licensees

Noted

Q3 Do you consider that derogations may be required for small companies and/or companies whose supply systems are wholly or mainly in Wales, due to their limited number of eligible customers? Please state what any such derogations should cover.

We agree with the proposal that all the changes to the IoAs set out in this consultation should also apply to small companies. Derogations for new appointees and other small companies would not be appropriate as market opening is for all non-household customers, including those with smaller appointee suppliers. The creation of different regulatory regimes for these would cause unnecessary confusion and complexity.

The burden on small companies is lower due to the lower number of customers involved.

We have no views on licence changes for companies wholly in Wales, although the same principles above do apply if companies have some customers in the English market.

Q4 Do you agree with our proposal to use a combination of ‘sunset’ and/or ‘sunrise’ clauses for the changes so that we can implement these changes ahead of the Secretary of State’s decisions on retail exit?

We do support this approach, as it should spread the implementation workload for all parties.

Q5 Do you agree with our proposal to use section 55 of the WA14 to make these changes?

We have no strong preference in this regard and would be supportive of an approach using section 55 or section 13 powers.

Ofwat state: We have two possible legal routes to make these changes:

- Section 13 of the WIA91; or*
- Section 55 of the WA14.*

Under section 55 Ofwat may modify the conditions of an appointment where we consider it necessary or expedient to do so in consequence of provision made by or under Part 1 of WA14.

Responses to our earlier consultation suggested a preference for us to use section 13 process for these changes, which is the process we usually use for making changes to the IoAs, rather than the section 55 process. Having reflected on those responses, we propose to use section 55 of the WIA91 for the following reasons:

- It would provide much greater certainty over delivery timescales; and*
- It would allow us to make consistent changes across all the IoAs, where appropriate, rather than company specific changes.*

We note that similar powers in the Water Act 2003 were used to introduce the current WSL arrangements in 2005. We also note that the inclusion of these powers in the WA14 demonstrates the Government's expectations that this statutory tool would be used to help to deliver the market arrangements.

More recently, we consulted on proposals to modify all existing IoAs and Water Supply Licences (WSL) by the addition of a retail market opening readiness condition (the readiness condition), using section 55 of the WA14.

For the proposed changes described in this document, we are considering whether to use a two stage process of consultation under section 55:

- This consultation is the first stage, and is intended to provide an opportunity for companies and other stakeholders to comment on our policy proposals and the draft text of the proposed changes to the IoAs. We plan to use stakeholder workshop(s) and discussions to identify and address any issues or concerns, to refine and finalise the text of the draft conditions, and reach a broad consensus on the proposed changes.*
- The second stage of the consultation will be the statutory consultation, when appointees will be asked to formally agree to the proposed modifications.*

Q6 Do you have any comments on the proposed drafting set out in the Appendices?

We note that you use April 2017 as the key date for most events. It may be more prudent to use the date of the opening of the market as determined by the Secretary of State.

Northumbrian Water Limited

31 May 2016