

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

Southern Water's Response

31 May 2016



Southern Water’s response to Ofwat’s consultation on further changes to all instruments of appointment

Overview

We are pleased to provide you with our response to your consultation on proposals for further changes to all instruments of appointment.

In general, we accept that the new conditions and the proposed changes to existing conditions are necessary. However, while we understand the rationale we do not support with the proposal to require a separate certificate of adequacy for the non-household retail business of an integrated incumbent. We believe that the financial statement can only apply to an appointed business and not to the separate parts of the value chain. The consultation does not set out how the licence condition would be enforced should part of the value chain be unable to provide a stand alone certificate of adequacy whilst sufficient financial resource is available to the appointed business. It is not clear that this would be possible in practice.

We accept that the customer protection code of practice condition is necessary. However, we have concerns over the governance process and the obligations in the Customer Protection Code of Practice, such as limiting back-billing of customers who have behaved inappropriately, which would reward dishonest or fraudulent behaviour.

Finally, we would also like to further understand the event triggers which will give effect to each of the proposed instrument of appointment changes.

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.

Condition	Southern Water response
MAC Condition	We agree that such a condition is required to give effect to the MAC and the establishment of the market operator.
Stapling Condition	We accept that this is necessary to ensure integrated appointees comply with the standard wholesale-retail interactions as set out in the WRC. We would suggest this should be a separate condition, as opposed to inclusion in condition F6. This would allow the condition to be ‘switched off’ following retail exit by an appointee.
Customer Protection Code of Practice	We accept that a new condition is necessary to ensure appointees comply with the customer protection code of practice. However, we do have concerns regarding the governance of the code, which does not employ the same checks and balances as the other market codes and does not provide an appeals process should any of the proposals have a significant impact on a market participant.

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.

Condition	Southern Water response
Terminology	We agree that some changes to general terminology are required, such as reference to WSSL.
Condition S	We agree that condition S, concerning the CTP process, will need to be removed, as it will be replaced by the switching process as set out in the new market arrangements. We also support the proposal to replace the CTP for combined supply with new processes once the Wholesale Authorisation arrangements have been developed.
Conditions R1-4	We agree with the proposal to remove the access code requirement, which will be replaced by the new market arrangements. We also support the proposal to replace the access code for combined supply once the Wholesale Authorisation arrangements have been developed.
Condition F6	We do not agree with the rationale to require a separate certificate of adequacy for the non-household retail business of an integrated incumbent. We believe that the financial statement can only apply holistically to an appointed business and not to the separate parts of the value chain. The consultation does not explain how in practice the licence condition would be employed should only part of the value chain be unable to provide a stand alone certificate of adequacy whilst sufficient financial resource is available to the appointed business.
Condition Q	We agree that the obligation to make drought payments should be extended to licensee customers.
Condition G	We agree that condition G, concerning the customer code of practice, should be limited to household customers in order to separate the obligations of the non-household market.
Condition I	We agree with the proposal to modify the WRC to ensure WSSL retailers pass on any leakage adjustment to the affected customer.

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.

Such derogations would not apply to Southern Water and as such we have no comment.

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 decision on retail exit?

In principle, we have no objection to the use of ‘sunset’ and ‘sunrise’ clauses to give effect to the conditions proposed. However, before accepting this proposal, we would like to see the event triggers and/or timetable for each of the proposed instrument of appointment changes.

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

We accept that it is necessary to introduce the proposed changes to the instruments of appointment in a timely fashion and to ensure consistency across the market participants. However, this would only be acceptable if our concerns are addressed.

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

The draft text of condition 1, relating to the Market Arrangements Code (MAC), could be simplified in line with draft condition 2. This would ensure that there is no inconsistency with the MAC and reflects the limited governance individual companies have over the arrangements detailed within the MAC.

Whilst we do not agree with the requirement for separate certificates, the draft text of condition F refers to the retail business, rather than the non-household retail business.

Should you have any queries regarding our response, or would like to discuss any aspect of it with us, please contact our Market Reform Manager, Dylan Freeman, on 01903 272351 or by email dylan.freeman@southernwater.co.uk