



Strategy & Regulation

Retail Market Opening Programme
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Dear Sir

**Retail Market Opening – further changes to all Instruments of Appointment:
a consultation**

Thank you for the opportunity to comment on further changes to all Instruments of Appointment in relation to the opening of the non-household retail market. We are in broad agreement with the proposals, though we have two points we would like to make.

First, the introduction of a licence condition obliging companies to comply with the CPCoP would be a marked change in regulatory approach, allowing Ofwat to change the requirements on companies without a right of appeal to the CMA. To mitigate the risk that this approach creates regulatory risk, we would suggest that: (a) the licence is clear that the CPCoP cannot be extended or amended in such a way that it has material adverse financial (or other) consequences for companies without the agreement of companies; and (b) there is an appeal mechanism to guard against such a move. We believe that both of these points could be addressed in the wording of the licence condition, and would be happy to suggest some drafting if Ofwat agrees with the general point we are making.

Second, we note that if the Stapling Condition requires companies to act as if they were separate and unrelated wholesale and retail entities, then the language of the proposed new conditions needs to reflect this. I.e. where the wording states "Appointee", the licence conditions need to be clear whether this refers to the wholesale business of the Appointee or the retail business of the Appointee.

Our detailed responses to the specific questions set out by Ofwat's consultation follow. We look forward to seeing the results of this consultation from Ofwat.

Yours faithfully

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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	Thames response
MAC condition	We see the need for such a condition. However, we feel the proposed condition results in duplication of the code itself and is unnecessarily complicated. We suggest simplifying the condition to “(1) <i>The Appointee must be a party to and comply with the Market Arrangements code. (2) The Market Arrangements Code shall contain procedures for its own modification (including procedures for the modification of the modification procedures themselves).</i> ”
Stapling condition	We agree with this proposal that (non-exited) appointees have to carry out activities as if there were an agreement under section 66D of WIA91 between the wholesale and retail businesses as separate and unrelated entities.
CPCoP	We suggest that the following changes are required: (a) the licence is clear that the CPCoP cannot be extended or amended in such a way that it has material adverse financial (or other) consequences for companies without the agreement of companies; and (b) there is an appeal mechanism to guard against such a move.

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.

Subject	Description	Thames response
Terminology	Some changes to general terminology will be required to reflect the legislative changes	We agree this is required.
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.	We agree with this proposal and to retain the provisions for the wholesale element of the combined supply licences in the IoAs until the new Wholesale Authorisations are in place.
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.	We agree with this proposal and to retain the provisions for the wholesale element of the combined supply licences in the IoAs until the new Wholesale Authorisations are in place.

Subject	Description	Thames response
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.	We agree with the proposal to carve out the CoA so that appointed companies have the same obligation as licensed retailers.
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.	We agree with this proposal.
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.	We agree with this split relating to the Customer Code of practice. We suggest that the terms "eligible" and "non-eligible" should be used in future rather than "residential" and "business". We feel that a Code of practice which applies to non-eligible customers most best be covered in a licence condition rather than in the bilateral WRC code or the CPCoP which refers only to eligible 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.	We agree with this proposal.

Subject	Description	Thames response
Condition R 7 - 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.	We agree with this approach, but it would be helpful if the language reflected that the "Appointee" has to act in two separate capacities as "Wholesaler" and "Retailer" to comply with the Stapling Condition.
Condition F6	Condition F could be amended to insert the level playing field obligations that we propose in the Stapling Condition mentioned above.	As was discussed at last week's consultation meeting, we believe that adding to an already detailed condition would be difficult without adding complexity. We believe that the Stapling Condition approach mentioned earlier is a more suitable approach.
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.	We agree with this proposal.

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 that the MAC, the WRC and the CPCoP are designed to provide consistent services to all customers and we do not see any way in which this could be provided should derogations be granted. Neither would it provide a level playing field for all retailers.

We understand that a working group has been established to look at possible derogations. We would welcome the opportunity to contribute to that group.

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 agree with this proposal.

Q5

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

We believe that this would be appropriate in this case, given the certainty over delivery timescales and the requirement for consistent changes across the IoAs.

Q6

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

We have one comment, which relates to *Draft condition 1 – Market Arrangements code*. While we have proposed a much simpler approach to this condition, should it go ahead in its current form, we suggest that the phrase “*take all steps within its power*” is replaced with the phrase “*take reasonable steps*”.