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Trust in water

Retail Market Opening – further changes to all instruments of appointment: updated proposals

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About this document

This document and the attached appendix sets out our latest proposals on [changes to all the Instruments of Appointment \(IoAs\)](#) in preparation for business retail market opening in April 2017

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1. Executive summary

In May 2016, we published a consultation on [changes to all the Instruments of Appointment \(IoAs\)](#) in preparation for business retail market opening in April 2017. In May and June, we held workshops to discuss our proposals, including workshops for appointed companies with limited numbers of eligible customers (including new appointees, and those whose systems are wholly or mainly in Wales).

We received 17 responses, although they did not all comment on each of the proposals. As a result of comments received, we have reviewed and updated some of our proposals. We were also asked to share draft text for some of the proposed changes that were not included in our earlier consultation - in particular, proposed changes to terminology and Condition G – ahead of the statutory consultation planned for July.

In this document and the attached Appendix we set out our latest proposals, updated as necessary to reflect responses and comments. Appointed companies and other stakeholders are invited to respond to these refined proposals, ahead of the planned statutory consultation next month. This is intended as an additional opportunity to comment on the drafting, rather than the policy, and respondents do not need to repeat points made earlier in the process that have already been considered. **The deadline for responses with any further comments on these updated proposals is Friday 1 July 2016.** Please send any responses to: retaillicensing@ofwat.gsi.gov.uk

The following tables summarise our original proposals, responses received, and how our proposals have been updated to reflect comments received, where appropriate:

Table 1: Proposed changes to new conditions

Condition	Proposed approach in May consultation	Responses to consultation	Updated proposals
MAC condition	This will give effect to the Market Arrangements Code (MAC). As it is not a statutory code, we need to give effect to the MAC via the retail Water Supply and Sewerage Licences (WSSLs) and IoAs. A similar condition is already included in the WSSL standard conditions.	All respondents agreed with this in principle, but the majority requested that we review the proposed drafting, as it was suggested that a more streamlined condition would be more appropriate	We have reviewed the drafting. Although our overall strategic direction for IoAs is towards a more principles based, simplified approach, it is necessary to include provisions on market governance at this stage to ensure that Ofwat and market participants have some certainty about the form and contents of key aspects of the

			MAC. We intend to revisit this as part of our separate project on simplifying IoAs, once the market governance arrangements are embedded.
Stapling condition	This will require integrated appointees to comply with the provisions of the Wholesale and Retail Code (WRC), which governs the behaviour and interactions of wholesalers and retailers in the market	All respondents agreed with this in principle, but some requested that we review the drafting to make it clearer.	We have reviewed the drafting in response to comments, and amended draft text is attached in the Appendix for comments.
Customer protection	This will require appointees to comply with the Customer Protection Code of Practice (CPCoP), which we have already consulted on separately. A similar condition is already included in the WSSL standard conditions	Respondents agreed with this in principle, although one queried proportionality for those appointees wholly or mainly in Wales. Some comments were made in relation to the requirements of the CPCoP, especially in relation to future code changes and the back-billing provisions.	We have amended the draft condition to be clear that it only applies to eligible customers, in response to comments about proportionality for appointees wholly or mainly in Wales. Updated draft text is included in the Appendix for comments. We have already consulted and concluded on the CPCoP, but set out below how to raise any new issues for our consideration.

Table 1.2 Proposed changes to existing conditions

Condition	Proposed approach in May consultation	Responses to consultation	Updated proposals
Terminology	Some changes to general terminology will be required to reflect the legislative changes	Respondents agreed that it will be necessary to update the terminology, although some responses requested sight of the actual drafting ahead of the statutory consultation.	Draft text is attached in the appendix for comments.
Condition S	To remove the Customer Transfer Protocol (CTP) for the retail market, as it will be replaced by the new market arrangements set out in the MAC and WRC. It may still be required for the wholesale element of	Respondents agreed with this proposed change, with one minor drafting comment.	We have reviewed the drafting in light of the comments received. Amended draft text is attached in the Appendix for comments

	combined supply licences, at least for a transitional period		
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	Respondents agreed with this proposed change, with one minor drafting comment.	We have reviewed the drafting in light of the comments received. Amended draft text is attached in the Appendix for comments
Condition F6	To create a new obligation for a separate certificate of adequacy for the business customer retail business of the appointee, carved out of the existing obligation to have a certificate of adequacy for the whole appointed business	The majority of responses agreed with our proposal. Two new appointees requested an exemption on the grounds of proportionality. One other appointee agreed with the rationale, but raised concerns about how it could be enforced.	Continue with proposed new obligation, but provide an exemption to small companies with limited numbers of eligible customers on the grounds of proportionality. This would exempt new appointees, appointees whose supply systems are wholly or mainly in Wales, and Cholderton and District Water. We are satisfied that the proposed new obligation could be enforced. Amended draft text is included in the Appendix for comments, to allow comments on the previously proposed sunset clause.
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 it on to the customer in accordance with WRC	Respondents agreed with this proposal. A couple suggested that some safeguards may need to be put in place to ring-fence the payments for customers.	We will continue with our original proposed drafting. We will also consider the implementation issues raised, and if necessary will propose amendments to the WRC and/or WSSL standard conditions.
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	Respondents agreed in principle, subject to sight of the proposed draft text. Some comments were received about improving	We have considered the comments received. We remain of the view that Condition G needs to be updated, but as there are different versions of this

	this condition to residential customers, and move the obligations that are relevant to business customers either to the WRC, the CPCoP or to a separate loA condition	the terminology relating to customers, and there were some differing views on whether the relevant protections should be in CPCoP or loAs.	condition in loAs, and the separate project to simplify and streamline loAs is expected to deliver improvements to the loAs within the next 12-18 months, we have decided that it would be better to update condition G through that process.
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	The majority of respondents agreed. One company agreed with the principle, but suggested a different way of implementing the change.	We will continue as planned. We do not consider that the suggested alternative would adequately protect customers for the reasons set out below.
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	Respondents agreed. One comment about drafting in relation to defining wholesale and retail activities.	We have reviewed the drafting and do not propose to amend the drafting of this condition.
Condition F6	Condition F could be amended to insert the level playing field obligations that we propose in the Stapling Condition mentioned above.	Respondents agreed that it would be better to include the necessary provisions in the proposed new Stapling condition, rather than F6, because it would be simpler to remove it for companies that exit the retail market.	Continue as planned with the proposed stapling condition, rather than amending F6.
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	Respondents agreed that this obligation should be retained.	We will retain this obligation.

The rest of the document is structured as follows:

- Section 2 explains our views on the proposed new conditions;
- Section 3 provides an update on the proposed amended conditions;
- Section 4 provides an update on derogations, retail exit interactions, and the process for modifying the loAs;
- Section 5 explains how to respond to these proposals, and outlines next steps.

2. Proposed new conditions

2.1 MAC condition

We proposed to insert a new condition into the IoAs to require all appointees to give effect to, and comply with the MAC. 16 out of 17 respondents commented on this proposed condition and they all agreed in principle. But more than half of respondents commented on the drafting. In particular, some responses suggested that a more streamlined condition would be better.

We have considered very carefully whether the draft condition could be amended to remove some of the detailed obligations. As announced in our [forward programme](#), Ofwat's overall strategic direction for licences and IoAs is towards a more principles based, simplified approach, and a separate project is being established to identify possible opportunities to modernise and simplify licences. With that in mind, we have challenged ourselves to consider whether the detailed provisions in the draft MAC condition are completely justified.

We have considered why the MAC condition is required. In part, it will help to create the legal framework and give effect to the MAC on an enduring basis, as the MAC is not a statutory code. This is important for the period before the Framework Agreement is signed, as it is only when the Framework Agreement has been signed by the original parties that the MAC will take effect. By inserting an obligation in the IoAs and WSSLs, appointees and licensees will be required to sign the Framework Agreement that will give effect to the MAC. The first part of the draft condition will do this, as well as requiring appointees and licensees to comply with the provisions of the MAC on an ongoing basis.

Additionally, we want to use the MAC condition to confirm certain essential elements of market governance, including the code change process. It is necessary for the MAC condition to do this ahead of market opening, so that the essential market governance arrangements balance the interests of market participants at the outset and cannot be changed or removed without Ofwat having an opportunity to veto the change or change the conditions of relevant undertakers or licensees.

On further consideration of the draft MAC provisions, we have identified a potential lack of clarity in the code change provisions. The proposed draft MAC may not be sufficiently clear that Ofwat needs to be able to propose, and if necessary, implement its own changes to the MAC. This is an important part of its role to make sure that the market works effectively in the best interests of customers, we will review, and if necessary, propose amendments to the draft MAC so that this is clear.

We have also considered the concerns raised about appointees possibly being obliged to do things that are beyond their control, and the suggestion that the word 'reasonable' should be added to qualify the steps that appointees would be expected to take. As the draft text already limits the appointee's obligation to only take steps that are within its power, we do not consider that the drafting needs to be amended further. Ofwat has certain legal duties to act reasonably and proportionately. So when deciding whether to take enforcement action Ofwat would be required to act reasonably and proportionally when determining if that company was in breach of its obligations. The level of action and effort taken by the company, with consideration of what steps were reasonably within its power, would be relevant when taking this decision. This approach is in line with our published Approach to Enforcement.

Once the retail market has opened and the market governance arrangements are properly embedded, we intend to review the MAC condition as part of our project on simplifying IoAs, with a view to stripping out some of the more detailed provisions as part of our move towards a principles based approach to licences and IoAs. At that stage, we would hope to be able to place greater reliance on our veto of any proposed code changes to protect the interests of customers.

2.2 Stapling condition

We proposed to introduce a new condition to require appointees with integrated wholesale and retail businesses to comply with the provisions of the WRC for interactions between their wholesale business and their retail business for eligible business customers. All 16 of the 17 responses that commented on this proposal agreed in principle. Some commented on the drafting, suggesting that the draft text could be improved. In particular: the absolute nature of the drafting could be problematic given that integrated appointees are one legal entity; reference to Condition B is not applicable to new appointees; and the drafting needs to be clear that the stapling condition would only apply to eligible customers for those appointees whose supply system is wholly or mainly in Wales. We have reviewed the draft text, and updated it in response to the comments received. In particular, we have copied the definitions from Condition B directly into this proposed condition, because new appointees do not have Condition B in their IoAs. An updated version with proposed changes marked is included in the Appendix for comments.

2.3 Customer protection condition

We proposed to insert a new condition in the IoAs to require appointees to comply with the recently published [CPCoP](#). All the respondents who commented on this

proposal (14 out of 17 responses) agreed with it. A few comments were received about the CPCoP, especially in relation to the process for modifying the CPCoP (which is different to the draft process for modifying the WRC and MAC), and the limitation on back-billing. There were also some concerns expressed about proportionality for appointees whose supply systems are wholly or mainly in Wales, although it was noted that if the obligation only covers eligible business customers (i.e. those using more than 50 Ml of water each year in Wales), protections aimed at micro-businesses would not apply in practice.

One respondent suggested amending the condition in the IoA so that it 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 to introduce an appeal mechanism to guard against such a move. We consider that placing a restriction as suggested on the extension or amendment to the CPCoP could potentially fetter our discretion to act on behalf of customers in the future. We note that the governance arrangements and modification procedure set out at paragraph 5 of the CPCoP requires us to consult on our proposal to accept, reject or amend each change proposal and provide details of the reasons for the decision reached, and we have certain legal duties to act reasonably and proportionately. We do not agree that a lack of consent should be used in this way to prevent future changes where there is a compelling justification for the change to protect customers.

We have considered the suggestion about introducing an appeals mechanism. The WA14 includes powers for the Secretary of State to introduce regulations that will provide for Ofwat's decisions to amend or not amend designated codes to be appealable to the CMA. We understand that Defra will be launching a consultation on the draft regulations in summer 2016. We understand that this will initially relate to codes relevant to the retail authorisations and the restricted retail authorisation but will not include the customer protection code of practice. We will keep this matter under review.

We have also considered the issue of proportionality, and whether there could be any exemption from the proposed customer protection condition for small appointees or those whose systems are wholly or mainly in Wales. We consider that proportionate and appropriate customer protection is essential for the retail market, and have already targeted some of the protections at the smallest business customers, so we do not propose to provide an exemption, especially as all WSSL retailers, including even the smallest new entrants, will be required to comply with the provisions of the CPCoP. But we have updated the draft text of the condition slightly to be clear that it only applies to eligible business customers, in recognition of the concern raised by appointees whose supply systems are wholly or mainly in

Wales, and draft text with proposed changes marked is included in the Appendix. Although the application of the CPCoP as currently drafted is limited to eligible business customers, we recognise that the CPCoP may evolve in the future, so there is a justification for using the customer protection condition in the IoAs to restrict the application of the CPCoP to eligible customers. The issue does not apply for WSSLs, as their customers will only be eligible business customers, so no change would be required for the WSSL standard conditions.

We note that issues relating to back-billing and code governance were considered before the CPCoP was finalised. For any new issues, please contact Rowaa Mahmoud (Rowaa.mahmoud@ofwat.gsi.gov.uk) to discuss. Any amendment to the code of practice published on 19 May 2016 will be subject to the code governance and change management arrangements set out in it.

3. Proposed amended conditions

3.1 Terminology

Respondents agreed with our proposal to update the terminology in the IoAs to reflect changes in legislation, subject to sight of the draft changes before they are finalised. In the Appendix we highlight areas on a generic IoA where the terminology needs to be updated. Note: this is provided as an example for the purposes of this consultation. As there are differences between the IoAs, appointees need to consider the proposed changes against their own IoA.

The proposed changes would insert new defined terms into Condition A to reflect changes to legislation:

“2014 Act” – “Water Act 2014”

“Licensee” – “the holder of a water supply licence and/or a sewerage licence granted by the Water Services Regulation Authority under section 17H and/or under section 17HA of the Water Industry Act 1991”

We also propose to replace “licensed water supplier” with “Licensee” in Conditions S and R, as well as defining additional terms used in our proposed amended text as set out in this document.

3.2 Condition S and R 1-4 – removing access code and CTP

We proposed removing the obligations for appointees to have an access code and comply with the CTP for switching eligible retail customers, as these will be replaced by the new market arrangements set out in the draft MAC and the draft WRC. It may still be required for the wholesale element of combined supply licences, at least for a transitional period. The 14 out of 17 responses that commented on this proposal agreed. One respondent made a minor drafting suggestion about the definition of retail market opening. Updated draft text with the proposed changes marked is included in the appendix for comments.

Note: we are currently considering how best to preserve the elements of conditions S and R that will still be needed for introductions of water under the combined supply licences, and plan to consult separately on our proposals in this area during the next few weeks before these modifications are finalised.

3.3 Condition F6 Certificate of adequacy

We proposed to create a new obligation for a separate certificate of adequacy for the business customer retail business of the appointee, carved out of the existing obligation to have a certificate of adequacy for the whole appointed business. The majority of responses agreed with our proposal, although there were some comments on the drafting. Two new appointees requested an exemption on the grounds of proportionality. One other appointee agreed with the rationale, but raised concerns about how it could be enforced.

We propose to continue as planned, but provide an exemption to companies with limited numbers of eligible customers on the grounds of proportionality. We are considering a threshold of 5,000 eligible customers, with the intention that this threshold would align with the threshold for possible code derogations, once that framework has been finalised and agreed. This would exempt new appointees, appointees wholly or mainly in Wales, and Cholderton and District Water Company Limited. We would do this by not modifying F6 in their IoAs, so that the existing condition would remain unchanged.

We have considered the drafting comments, and updated draft text with proposed changes marked is included in the appendix for comment. We are satisfied that the proposed new obligation could be enforced as currently drafted.

3.4 Condition Q – drought payments

As the obligation to make drought payments relates to the appointee's role as a wholesaler, we proposed 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.

All the respondents that commented on this proposal (14 out of 17) agreed. A couple suggested that some safeguards may need to be put in place to ring-fence the payments for customers, in case the retailer becomes insolvent, to prevent the wholesaler being required to pay twice. It was noted that drought incidents can be widespread, affecting many customers, which could increase the risk of a retailer getting into financial difficulties.

We agree that we need to make sure drought payments for affected customers are passed on to those customers. As the provisions of the IoAs do not apply to retailers,

we would need to find another way to implement any such safeguards, if we decide that they are required. The WRC is the most likely instrument for this. So we will continue with our original proposed drafting to update Condition Q in the IoAs, and we will also consider whether any amendments to the WRC and/or WSSL standard conditions may be required.

3.5 Condition G – customer condition

Our considerations around this condition have been different to the other proposals set out in this consultation, as we did not propose to alter the obligations under Condition G ahead of retail market opening, but we had considered amending the drafting of the condition to provide greater clarity to appointees on which provisions only apply to residential customers, and which apply to business customers too. All respondents who commented on this proposal agreed that the drafting of the condition could be improved, subject to sight of the proposed draft text before it is finalised. A few suggestions on the drafting were received. These focused on terminology and signposting CCWater’s role. There were differing views about whether the protections should be in the CPCoP or in the IoAs. It was suggested that protections for ineligible business customers would need to be in the IoAs, as the CPCoP only protects eligible customers, which is correct. In addition, the CPCoP only applies to retail activities, so any protections that relate to wholesale activities would need to be retained in the IoAs. We also note that some of the more recently issued IoAs (for example, Severn Trent Services and South West Water) have included an updated version of Condition G, which incorporates provisions from Condition H too.

We continue to hold the view that the drafting of Condition G needs to be updated, but we are considering how best to take this forward. As explained above in relation to the MAC condition, we are starting a new project to consider simplifying and streamlining IoAs. The first phase of that project is expected to be completed within the next 12 months. Even if we decide to amend Condition G ahead of market opening, we would expect it to be reviewed again as part of that project over the coming months. So we have considered whether possible benefits from updating the drafting of Condition G in the short term, ahead of market opening, would justify the time and effort (including from appointees and other stakeholders) to unpick and redraft the condition at this stage. The three options for updating condition G are summarised in the table below:

Table 2: Summary of three options for updating Condition G

Option	Comments
1. Amend Condition G to separate out the protections for business customers ahead of market opening	Fairly complex and more resource intensive to implement (for both Ofwat and appointees). Producing separate provisions for business customers would result in detailed provisions which are likely to be further amended during the process to simplify and streamline IoAs.
2. Amend IoAs to replace conditions H and G with the more recent version of Condition G (included in IoAs recently issued to South West Water and Severn Trent Services)	This is potentially a middle option, which could be implemented more easily, but the updated condition does not separate out business customers, so there may not be much benefit. It is likely to be further amended during the process to simplify and streamline the IoAs.
3. Amend Condition G as part of the wider project to simplify and streamline IoAs and licences where possible.	Would only need to be amended once, and would better align with our strategic direction of travel for IoAs, as we are moving towards a more principles based approach.

Having considered these options, we do not consider that there would be any real benefit from amending Condition G ahead of retail market opening, given that it may need to be further updated in line with our overall approach to IoA simplification within a few months of market opening. So, we propose to review and potentially amend condition G through the separate project to simplify and streamline IoAs, rather than amending it twice. As we have reminded appointees through this process of consultation that some provisions of Condition G do apply to business customers as well as residential customers, we are satisfied that it can remain as currently drafted ahead of market opening. We are very interested in stakeholder views on the three options above, and in particular on the extent to which stakeholders are content with the conclusion that we should make the necessary changes as part of a project aimed at simplifying licences.

3.6 Condition I – leakage adjustments

We proposed to leave Condition I unchanged, and instead proposed to amend the WRC to require retailers to pass on any leakage adjustments to affected customers. All but one of the respondents agreed, who agreed with the principle, but suggested an alternative way of implementing the change so that protections for business customers are only included in the CPCoP and/or the WRC, rather than the IoA.

We have considered this suggestion, but we do not consider that it would adequately protect customers. The CPCoP only applies to retail activities, so would be unsuitable as a replacement for the obligations that currently sit in the IoA, as those obligations relate to wholesale activities. Similarly, the WRC is unsuitable as an

instrument to directly protect customers, as it deals with the relationship between wholesalers and retailers, rather than between retailers and customer. So we propose to continue as planned.

3.7 Condition R 7-9 – Information provisions

We proposed to leave these obligations unchanged, and instead to review and if necessary amend the WRC to avoid any unnecessary duplication or inconsistency with these obligations. All respondents agreed, although we had some comments on drafting from one appointee, who suggested that this condition needs to be consistent with the requirements of the stapling condition by being clear about wholesale and retail activities. We have reviewed the drafting and do not propose to amend this condition. As the condition applies to the interaction between the appointee acting in its capacity as a wholesaler, and a licensed WSSL retailer, we do not consider that any further definitions of the wholesale or retail activities are required.

4. Other considerations

4.1 Managing the interaction with the retail exit timetable

As we need to make the modifications to the IoAs before any retail exit decisions are taken by the Secretary of State, we proposed to use a form of sunset and/or sunrise clauses as necessary to limit some of the obligations that are only applicable to retail activities to those appointees that remain in the business retail market.

12 of the 17 responses supported this proposal or had no objection. One additional response supported the principle but suggested a slightly different way of achieving the objective. The rest of the responses did not comment on this proposal.

So we propose to use a form of sunset clause to limit the application of the Stapling condition, the customer protection condition and the requirement for a separate certificate of adequacy to those appointees that remain in the business retail market. This clause will only be required for those appointees whose supply system is wholly or mainly in England, as appointees whose supply system is wholly or mainly in Wales are not able to exit the market. Draft text is included in the Appendix. All the other proposed changes would apply to all appointees, as they relate to wholesale activities. The table below summarises the application of these proposals for appointees depending on whether they exit or not, or if they are wholly or mainly in Wales.

Table 2: Summary of proposals showing the different position for appointees depending on whether they exit or not, or are wholly or mainly in Wales

Appointees wholly or mainly in England		Appointees wholly or mainly in Wales
Exit	No exit	Exit not permitted
MAC condition	MAC condition	MAC condition
Stapling condition switched off	Stapling condition	Stapling condition (eligible customers)
Customer protection condition switched off	Customer protection condition	Customer protection condition (eligible customers)
Terminology changes	Terminology changes	Terminology changes
Condition S and R updated to remove CTP and access codes for retail (will remain switched off for some small	Condition S and R updated to remove CTP and access codes for retail (will remain switched off for some small	Condition S and R updated to remove CTP and access codes for retail

Appointees wholly or mainly in England		Appointees wholly or mainly in Wales
Exit	No exit	Exit not permitted
companies if currently switched off)	companies if currently switched off)	
Separate certificate of adequacy provision switched off	Separate certificate of adequacy required exemption for small companies	exemption – no requirement for separate certificate of adequacy
Updated condition Q	Updated condition Q	Updated condition Q
Existing condition G	Existing condition G	Existing condition G
Existing condition I – no change	Existing condition I – no change	Existing condition I – no change
Existing Condition R 7-9 – no change	Existing Condition R 7-9 – no change	Existing Condition R 7-9 – no change

4.2 Process for modifying the IoAs

We proposed to use section 55 of the Water Act 2014 to make the modifications, rather than the more usual route under section 13 of the Water Industry Act 1991. The majority of respondents (12 out of 17) supported this proposal. The remaining respondents either did not comment on this proposal, or stated that they had no preference. So we propose to make these modifications under section 55, subject to confirming that the requirements of section 55 are met in each case.

4.3 Possible derogations

We also asked stakeholders for their views on potential derogations from the WRC and/or MAC for small appointees and/or those based wholly or mainly in Wales with limited numbers of eligible customers. Responses were mixed. A couple of the larger companies stated that derogations would be unnecessary. 11 out of the 17 responses agreed that there may need to be derogations, although some of these responses emphasised that there must be a compelling reason for any derogations and that they must not disadvantage others. The remaining four respondents did not comment.

We consider that some derogations may be required for those appointees with smaller numbers of eligible customers, especially new appointees and those whose supply system is wholly or mainly in Wales. We agree that any derogation should not provide a company with a competitive advantage but rather recognise the relative

burden placed on various sizes of competitors. We are currently taking this forward through a series of workshops with small companies to develop a framework for possible derogations. We plan to discuss our proposals with all appointees via representatives on the Interim Code Panel before any derogations are taken forwards.

5. Deadline for responses and next steps

We have committed to finalising the modifications to the IoAs by the end of August to provide some certainty to companies about their obligations ahead of their retail exit decisions and final preparations for retail market opening. As we have inserted this additional stage of consultation into the planned timetable in response to requests from appointed companies, the period for responses is shorter than usual so that we can continue with the planned statutory consultation in July.

Appointed companies and other stakeholders are invited to respond to these refined proposals, ahead of the planned statutory consultation next month. This is intended as an additional opportunity to comment on the drafting, rather than the policy, and respondents do not need to repeat points made earlier in the process that have already been considered. **The deadline for responses with any further comments on these updated proposals is Friday 1 July 2016.** Please send any responses to: retaillicensing@ofwat.gsi.gov.uk

In the meantime, if you have any queries or would like to discuss any of the proposals set out in this document, please contact Ruth Gibson (ruth.gibson@ofwat.gsi.gov.uk or 0121 644 7528).

Subject to the responses to the updated proposals set out in this consultation, we plan to publish our final proposals for consultation in mid-July, with the aim of implementing the modifications by the end of August.