

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

About this document

This document consults on our proposed changes to the instrument of appointments (IoAs) of water and wastewater companies to facilitate the opening of the retail market for business, charity and public sector organisations. IoAs are the regulatory instruments of appointed companies, containing a number of conditions which cover both retail and wholesale activities of the appointed company.

Retail services include activities such as billing and customer services. At present, only a limited number of the largest business customers across England and Wales can choose their retailer. Most customers must use services provided by their local monopoly water only or water and wastewater companies. The Water Act 2014 (WA14) will allow eligible business, charity and public sector customers (referred to as business customers in the rest of this document) to choose their supplier of water and wastewater retail services from April 2017. For customers who use the supply system or sewerage system of an appointed company whose system is wholly or mainly in England, the market will be extended to include all business customers. The Welsh Government has not implemented these changes in respect of customers who use the supply system of an appointed company whose system is wholly or mainly in Wales. For those customers, only customers using more than 50 Ml of water each year will be able to choose their water supplier, reflecting the different policy position of the Welsh Government. More information on which customers are eligible is available in [our eligibility guidance](#) and the recent consultations on our supporting guidance in [March](#) and [April](#) 2016.

The UK Government (Defra), Ofwat and the developer of the core systems and processes that will enable customers to switch between suppliers, Market Operator Services Limited (MOSL), are working together closely to deliver the programme of work ('Open Water') to open the market. The new retail market sits within a revised [legal framework](#) comprising the WA14 and consequent amendments to the Water Industry Act 1991 (WIA91), together with secondary legislation including retail exit regulations being developed by Defra. In addition, draft market codes that will provide the detailed rules for the retail market have been developed by Open Water. These are the [Wholesale Retail Code](#) (WRC) and the [Market Arrangements Code](#) (MAC). The WRC is a statutory code, as it is provided for by legislation. Other codes such as the MAC are non-statutory codes as they are given effect by other parts of the legal framework, such as licence or IoA conditions.

Opening the new market is a complex challenge but it is [on track to open in April 2017](#). The design is almost complete, and work is now being carried out to deliver

the technical systems, checks and ways of working that are needed to get the market right for customers.

A key aspect of opening the new retail market is ensuring that the licensing arrangements are appropriate. This document consults on a range of changes to IoAs of monopoly water only and water and sewerage companies in England and Wales. The purpose of these changes is to ensure that all appointees are required to comply with key aspects of the new market framework including the proposed [MAC](#), the [WRC](#) and [Customer Protection Code of Practice \(CPCoP\)](#) and to remove obligations that are no longer required as, for example, they are duplicated in these market arrangements.

To prepare for the retail market, we need to make the changes ahead of market opening in April 2017, although in most cases, the changes would only take effect at market opening. Appointees whose areas are wholly or mainly in Wales will also be affected by the changes as they will need to interact with the market arrangements, although their numbers of eligible customers will be limited because of the retention of 50MI threshold.

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Responding to this consultation

We invite stakeholders to comment on our intended modifications by 31 May 2016. You can email your responses to retaillicensing@ofwat.gsi.gov.uk or post them to:

Retail Market Opening Programme
Ofwat
21 Bloomsbury Street
London WC1B 3HF.

If you wish to discuss any aspect of this document, please direct your enquiry to Ruth Gibson on 0121 644 7528 or by email to ruth.gibson@ofwat.gsi.gov.uk.

We will publish responses to this document on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the Data Protection Act 1998 and the Environmental Information Regulations 2004. If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory ‘Code of Practice’ which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

List of consultation questions

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.

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.

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.

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?

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

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

1. Executive Summary

1.1 Purpose and background

The WA14 will allow eligible business customers to choose their supplier of water and wastewater retail services from April 2017. For customers who use the supply system or sewerage system of a regional monopoly water company (appointed company) whose area is wholly or mainly in England, the market will be extended to include all business customers. For those who use the supply system of an appointed company whose area is wholly or mainly in Wales, only customers using more than 50 Ml of water each year will be able to choose their water supplier, reflecting the different policy position of the Welsh Government.

As part of the preparations for the retail market, we need to make some changes to the regulatory instruments of appointed companies (IoAs). An IoA covers both retail and wholesale activities of the appointed company, although when the expanded retail market opens appointed companies may apply to exit from the business retail market. If an appointed company exits, they would no longer need obligations in their IoA relating to their retail activities, although they would still require any obligations that are relevant to their role as a wholesaler in the market.

This document follows on from our recent results document '[Consultation on licensing: results and decisions](#)' which was published on 9 December 2015 (December Results Document), and the further consultations on more immediate changes to the instruments of appointment and the WSLs: [consultation on proposed market readiness condition](#), and the [proposed removal of the in-area trading ban](#), both published on 3 March 2016. In the [December Results Document](#), we identified five main deliverables required for the licensing framework for non-household retail market opening and explained the next steps that we intended to follow.

We have already consulted on some proposals in two areas ([market readiness](#) and the proposed [removal of the in area trading ban](#)) as a priority, as these changes are needed more quickly. We are now consulting on further proposed changes to the IoAs; the rest of this consultation document describes those proposed changes and explains why we need to make them.

1.2 Aim of the proposed changes

The proposed changes cover the the IoAs of appointed monopoly water only and water and sewerage companies in England and Wales ('appointees') including,

where applicable, companies that have successfully applied for an appointment to replace the existing appointed water and or sewerage company at a particular site ('new appointees'). The proposed changes will affect appointees whose areas are wholly or mainly in England. The proposed changes will also affect appointees whose areas are wholly or mainly in Wales as these companies will also need to interact with the new market arrangements, although their numbers of eligible customers will be limited because of the retention of 50MI threshold.

We are proposing to make the changes ahead of market opening in April 2017 to prepare for the opening of the retail market, although in most cases, the changes would only take effect at market opening.

The changes are intended to:

- Help establish the new market framework by requiring all appointees to comply with the provisions of the proposed [MAC](#), the [WRC](#) and the proposed [CPCoP](#);
- Remove obligations relating to the current arrangements for the existing Water Supply Licensing (WSL) regime that will no longer be required after April 2017. These are the requirements for appointees to comply with the Customer Transfer Protocol (CTP) for the transfer of supplies to premises of eligible customers, and to have an access code. We are still considering whether we need to retain the CTP and access codes for introductions of water, where the wholesale element of old combined supply licences will be replaced by the new English Wholesale Authorisations (WAs) and the Welsh Supplementary Authorisations (SAs) of new water supply licences, as explained in the recently published [information notice](#);
- Remove duplication and potential inconsistencies between the IoAs and [WRC](#) and [MAC](#) in relation to a number of other conditions; and
- Introduce a new requirement for a separate Certificate of Adequacy for all appointees' non-household retail businesses, so that all appointees face similar obligations to licensed retailers.

1.3 Summary of our proposals

We propose to insert three new conditions in all IoAs as set out below.

Table 1.1: Proposed new conditions

Condition	Proposed approach
MAC 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
CPCoP	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

We also propose to amend some of the existing conditions.

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
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
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
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
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

Condition	Proposed change
	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
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.
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
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
Condition F6	Condition F could be amended to insert the level playing field obligations that we propose in the Stapling Condition mentioned above.
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 have a choice of legal tools to make these changes: either using the modification process under section 13 of the WIA91; or using section 55 of the WA14, which allows Ofwat to modify the conditions of an appointment and/or the conditions of a licence under Chapter 1A of Part 2 of the WIA91 where we considers it necessary or expedient to do so in consequence of provision made by or under Part 1 of WA14 (the provisions for the retail market).

We consider these proposed changes are necessary or expedient in consequence of the retail market provisions in the WA14, so we are considering using section 55 to make them. The benefits of using section 55 are that it would give us certainty over the length of time it will take to make the changes, and will result in consistent

changes across all the IoAs. We note that similar provisions in the 2003 Act were used to introduce the arrangements for the current WSL regime in 2005.

We have also considered the interaction between these proposed changes and Defra's retail exit timetable, as some of the proposed changes would be affected by that decision as they might not be required or might need to be amended if companies exit the retail market. As decisions by the Secretary of State on retail exit are only expected to be confirmed in January 2017, we cannot wait until after the retail exit decisions to make these proposed changes, as there would be very little time to carry out the necessary consultations before the market opens in April 2017. Instead, we have two options:

- We could produce two separate versions of the IoA (one for non-exited appointees, and another for exited appointees) and ask companies to agree the relevant changes in principle ahead of the formal decisions on exit; or
- We could make the changes for all appointees, but use a combination of 'sunset' and 'sunrise' clauses to give effect to the relevant provisions in each case.

Our preference is to use a combination of 'sunset' and 'sunrise' clauses as necessary, to make the changes ahead of the formal exit decisions. We are interested in stakeholder views on this.

1.4 Structure of this document

The document is structured as follows:

- Chapter 2 explains the three new conditions that we propose to insert in all IoAs;
- Chapter 3 sets out the proposed amendments to the existing conditions;
- Chapter 4 considers issues of proportionality for small companies;
- Chapter 5 considers issues related to companies whose supply systems are based wholly or mainly in Wales;
- Chapter 6 considers the interactions with retail exit; and
- Chapter 7 outlines next steps.

The proposed draft text for the new conditions is included at Appendix 1, and proposed changes to the existing conditions are included at Appendix 2. This is indicative draft text based on one version of an IoA to provide an example of what the proposed changes would look like. There are some small variations between the

IoAs for different companies, so each company will need to consider how these proposed changes may affect it.

1.5 Next steps

This consultation forms the first of a two stage consultation. We are seeking stakeholders' views on these proposals, with the aim of reaching a broad consensus with companies on the draft text for the new and amended conditions before issuing the relevant statutory notices. We also plan to offer workshops and/or bilateral meetings with companies and other stakeholders, to help identify and address any possible queries or areas of concern. These are expected to take place in May 2016.

We also plan to consider possible derogations to the [WRC](#) and/or [MAC](#) in a number of areas, including to make sure that the obligations on small companies and those appointees whose systems are wholly or mainly in Wales are proportionate to their limited numbers of eligible customers.

Subject to responses to our consultation, we plan to confirm the resulting changes to the IoA by the end of August 2016, ahead of the shadow operation phase of market preparations. It should be noted that the MAC condition may be needed more quickly than the other changes as it is relevant to the transition arrangements for the retail market, especially relating to the market operator, so if there are any delays with the timetable to allow time for more consultation on the other proposed changes, we may need to progress it separately on a fast tracked timetable.

Any changes which have implications for the wholesale element of the current combined supply arrangements may take longer to allow time for us to consider responses from the planned separate consultation on the new WAs and SAs in summer 2016 and decide our preferred policy approach. All the changes are required to take effect by market opening.

2. Proposed new conditions

2.1 Introduction

There are two types of regulatory instrument for the new retail market: the new retail licences known as Water Supply and Sewerage Licences (WSSLs) and the instruments for regional monopoly water companies, which are called the Instruments of Appointment (IoAs). An IoA covers both retail and wholesale activities of the water company.

WSSLs will replace existing retail licences in the current 5MI (50MI in Wales) retail market that are called Water Supply Licences (WSLs) – these will be revoked as part of the transition to the new market arrangements. Current holders of WSLs are expected to [apply for a new WSSL](#), if they want to participate in the new retail market. In consultation with Welsh Ministers where appropriate, Defra has already consulted on, and published, the [standard conditions of the WSSL](#).

As explained in our previous [consultation on licensing changes](#) in June 2015 (June Consultation), we also need to update the IoAs to prepare for market opening in April 2017. Proposed changes include adding new conditions, amending some of the existing conditions, and updating the terminology to reflect the new market arrangements. Responses to our consultation broadly supported the need to update the IoAs, subject to further consultation on the detailed proposed changes.

Since then, we have taken forward proposals in two areas ([market readiness](#) and the proposed [removal of the in area trading ban](#)) as a priority, as the changes are needed more quickly. We are now consulting on further proposed changes to the IoAs, and the rest of this consultation document describes the proposed changes and explains why we need to make these changes.

In this chapter we explain our proposals for three new conditions to be inserted in the IoAs of all appointed companies. The next chapter covers proposed changes to existing conditions.

2.2 Proposed new conditions

As explained in our [June consultation](#) and in the [December Results Document](#), we consider that some additional licence conditions are required to give effect to the new market arrangements. In particular, we need to give effect to the [MAC](#), the [WRC](#) and the proposed [CPCoP](#). We propose to do this through the instruments by which

we regulate companies (WSSLs and IoAs). Conditions in relation to the [MAC](#) and [CPCoP](#) are already included in the WSSL [standard conditions](#) published by Defra. We are now seeking views on our proposal to include similar conditions in the IoAs, and to add a further condition – referred to as the stapling condition - to give effect to the [WRC](#) so that it also applies to the integrated wholesale and retail businesses of the appointed companies. We propose to do this so that appointees are bound by obligations which have the same effect as the obligations on new entrant licensees.

In the rest of this chapter we explain our proposals for each of the new conditions. Draft text for each of the conditions is included in Appendix 1. Where we have proposed changes to the previously published text, we have provided a version showing proposed changes.

We also explain our plans to take forward the work on possible standard derogations to the [MAC](#) and/or [WRC](#) for integrated appointees, and possible additional derogations to make sure that the obligations on new appointees, small companies and those appointees whose systems are wholly or mainly in Wales are proportionate.

2.3 [MAC condition](#)

The draft [MAC](#) is a multi-lateral code applying to all market participants and helping to establish the Market Operator. It contains provisions that set out how the parties will work together to govern the market and is an essential part of the new market legal framework. Unlike some of the other codes that form part of the legal framework for the retail market, the [MAC](#) will not be a statutory code. So we need to give effect to it using a different legal tool. As recommended by Open Water, we propose to do this by inserting a new licence condition in the IoAs, as we have done for WSSLs, requiring companies to be a party to, and comply with, the [MAC](#) with certain minimum requirements for the content of the [MAC](#).

We consulted on the proposed [MAC](#) enabling condition in our [June Consultation](#). There was strong agreement to include the condition in both the WSSL [standard conditions](#) and the IoAs. As explained in our [December Results Document](#), we amended the draft text to reflect responses received during our consultation, and the updated [MAC](#) enabling condition has been included in the WSSL [standard conditions](#) recently consulted on, and published by Defra.

We now propose to include a substantively identical condition in the IoAs to require appointed companies to be a party to, and comply with, the [MAC](#). The draft wording

only differs from the version in the WSSL where we have replaced the word 'licensee' with 'appointee'. The draft condition is included in Appendix 1.

2.4 Customer protection condition

As part of the preparation for the retail market, we need to consider how to appropriately protect customers in the new market. The best way to protect customers is to make sure the market works effectively in the interests of customers, but we have also considered whether additional protections may be required in certain areas. In December 2015 we published our [initial proposals for protecting customers](#), which included a proposed new mandatory [CPCoP](#). More recently, we have consulted on our further proposals and the draft [CPCoP](#).

The draft [CPCoP](#) is relevant to all potential market participants who may carry out retail activities in the market, so is applicable to both licensees and appointed companies. In our [December Results Document](#), we explained that a new condition needed to be added to the WSSL [standard conditions](#) and the IoAs to require both licensees and appointed companies to comply with the provisions of the [CPCoP](#). Since then, a customer protection condition has been included in the WSSL [standard conditions](#) consulted on, and published, by Defra. The customer protection condition requires licensees to comply with provisions of the [CPCoP](#) and states that the [CPCoP](#) shall contain the procedure for its own modification.

More recently, in the consultation on our further proposals and the draft [CPCoP](#), we proposed that the condition in IoAs and WSSL [standard conditions](#) should include specific provisions on the code governance, to provide greater certainty about how any future changes to the [CPCoP](#) would be decided.

2.4.1 Responses to the consultation on the draft [CPCoP](#)

The responses we received to the consultation did not point to a strong preference either way on whether specific provisions on code governance should be included in the IoA condition or in the [CPCoP](#). Out of 18 responses received, 5 appointed companies stated that the code governance arrangements should be set out in the [CPCoP](#), rather than in a condition in the IoA and WSSL; one appointed company and CCWater stated a preference for the code governance arrangements in a condition in the IoA and WSSL; 6 respondents stated they had no preference either way; and the remaining 5 responses did not include any comments on this point.

2.4.2 Our proposed approach

To appropriately protect customers in the market, we propose to insert a new condition in the IoAs requiring appointed companies to comply with the [CPCoP](#). Having considered the responses to our recent consultation on the [CPCoP](#), although there does not appear to be a strong preference, there seems to be some support for including the code governance provisions in the [CPCoP](#), rather than the IoA. So we propose to include a condition in the IoA that is substantively identical to the condition currently included in the WSSL [standard conditions](#), simply amending 'licensee' to 'appointee'. The condition would require all appointees to comply with the obligations of the [CPCoP](#), and would state that the process for modifying the [CPCoP](#) would be set out in the [CPCoP](#).

A draft of the proposed condition is included in Appendix 1.

2.5 Stapling condition

In our earlier licensing consultation, we explained that Open Water has recommended that we insert a condition in the IoA regarding the conduct of appointed companies that have integrated wholesale and retail businesses. The programme was concerned that, without such a condition, appointees' non-household retail businesses would not be bound by the provisions of the [WRC](#) in the same way as licensees because the relevant WA14 provisions only cover licensees.

We proposed to introduce a stapling condition in the IoA that would require (non-exited) appointees 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. It also required them to put in place written arrangements and provided for Schedule 8 of the [MAC](#) to set out some provisions around how the [MAC](#) and [WRC](#) would apply in relation to integrated appointed companies.

2.5.1 Further consideration of responses to the earlier licensing consultation

Although the majority of responses were supportive of the principle of a Stapling condition, some concerns were raised about the proposed drafting. We set out below how we have taken these concerns into account in our proposed drafting but would welcome further specific proposals from companies where they consider the drafting of the condition or Schedule 8 of the [MAC](#) could be improved further to address any remaining concerns:

- *It would be difficult to comply with the condition as drafted without legally separating.*

We have amended the drafting to remove the words '*and unrelated*' from paragraph 1(b) of the draft condition.

- *The condition appeared to apply to all retail activities, rather than just those relating to the contestable market.*

We have reviewed the drafting and are satisfied that the condition would only apply to retail activities in the contestable market, but we would consider any suggestions for improving the drafting even further.

- *It could prevent shared services that were taken into account when the 2014 price controls were set.*

It should still be possible to have shared services under the draft condition, but we would consider any suggestions for amending the draft text to be clear on this point.

- *There could be disproportionate burdens on small companies and new appointees.*

We recognise that this is a concern, and have recently consulted on the approach to derogations for small companies, new appointees and appointees wholly or mainly in Wales. More details on our planned approach to take this forward are included below.

- *There needs to be clarity on precedence and the interaction with Schedule 8 of the [MAC](#).*

The condition is designed to work together with Schedule 8, but we are willing to consider suggested changes to the drafting to explain the interaction more clearly. We also recognise that there may need to be some derogations for all integrated appointees added to Schedule 8, which sets out how the [WRC](#) will apply to integrated wholesale and retail businesses, and we would welcome suggestions for what any such derogations should cover.

2.5.2 Our planned approach to take this forward.

Having reflected on the responses, we strongly remain of the view that a stapling condition is needed to require the retail businesses of appointed companies to comply with the provisions of the [WRC](#) and to help make sure that there is a level playing field between WSSL retailers and the retail businesses of integrated appointees, so that the market arrangements work effectively for customers. But we agree that it is important that the detailed drafting of the condition does not create unworkable obligations or confusion about the relationship between the proposed condition and Schedule 8 of the [MAC](#).

We have updated the draft condition to:

1. remove the introduction, as this is duplicates the main provision and is not needed for such a short condition;
2. Remove unnecessary definitions;
3. Amend paragraph 1(b) to address the implied requirement for business separation, linking and limiting that obligation by reference to conditions R and F of the IoA; and
4. Amend the requirement to provide information subject to the Authority's request.

The amended draft condition is included in Appendix 1, with the changes from the previous version marked.

We have recently consulted new appointees, small companies and appointees based wholly or mainly in Wales, to better understand the issues and concerns affecting them due to their size and more limited capacity to interact with the central market systems. We will work with MOSL to consider possible derogations for these new appointees, small companies, and appointees whose systems are wholly or mainly in Wales, so that the obligations on them are proportionate to the limited number of eligible customers supplied by them.

In addition to any such derogations, we consider that there may need to be some additional derogations that may need to apply to all integrated appointees, which should be included in Schedule 8 of the [MAC](#). We would welcome suggestions for potential derogations.

3. Other proposed changes to all instruments of appointment

In this chapter, we discuss other changes to the IoAs which may be required.

In addition to the new proposed conditions outlined above, we also propose to update some of existing conditions in the IoAs to reflect the new market arrangements, as outlined in the earlier [June Consultation](#) and our [December Results Document](#). Responses to the earlier consultation broadly supported our proposals to consider amending number of conditions, subject to further consultation on the detailed drafting. This purpose of this consultation is to consult on the proposed draft changes, ahead of the planned statutory consultation.

As the existing legal framework for the retail market is complex, partly due to the number of legal instruments and the way they have developed over time, our aim is to update the legal framework to support the new market arrangements in a way that helps market participants understand where their various obligations sit within that framework. When deciding where particular obligations should sit, we have considered the overall purpose of the various instruments to decide best fit. We have considered further what changes may be needed to the existing IoA conditions through this lens. We have also considered the responses to the [June Consultation](#) and other more recent consultations including the [CPCoP](#) and the proposed removal of the in-area trading ban. In some instances, we are proposing that no changes are required to the IoA because we propose to address the issue(s) through a different legal instrument. Our proposals are summarised in the table below, and the detailed drafting is set out in Appendix 2, based on a single IoA that was also used for the proposals in our [June Consultation](#).

As there are some small variations in drafting and content between the IoAs for different appointed companies, it is important that appointed companies consider how the proposed changes may affect them. In particular, appointed companies should identify where specific changes should be amended (or not apply) due to the non-standard nature of the provisions in their IoA.

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
To update the IoA to reflect changes in legislation	Especially Condition A (interpretation and construction), but may also affect other conditions	“As well as the amendments set out in Table 3, there will be amendments of terminology and referencing required by the WIA91 (especially in Condition A (interpretation and construction)).” Section 5.1 on page 31	[Not explicitly discussed.]	As set out in the June Consultation , we propose to make the necessary housekeeping amendments to terminology and referencing, to reflect changes in legislation. Responses to our earlier consultation agreed that some updating needs to take place.
To remove the current WSL arrangements that will no	Condition S Customer Transfer	“Condition s will be removed as it is replaced by the market arrangements set	“We will amend Condition S to remove the condition.”	As stated in the December Results Document , we propose to remove these obligations from Condition S with effect from [April 2017 (‘go live’ date)] in relation to the new retail market.

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
<p>longer be required after April 2017</p>	<p>Protocol (CTP)</p>	<p>out in the MAP.” Section 5.1 on page 31.</p> <p>“Amend or delete depending on form of transition scheme for combined supplies.” Table 5 in section 5.1.2</p>	<p>Table in Section 4.3, on page 26</p>	<p>For the water retail and sewerage retail market, customer transfers will be covered by the new retail market arrangements set out in the WIAA91 (as amended by the WA14) and the MAC and WRC, so the IoA CTP provisions will no longer be required.</p> <p>However, we are still considering whether we need to retain the CTP for introductions of water, where the wholesale element of old combined supply licences will be succeeded by the new English Wholesale Authorisations (WA) and the Welsh Supplementary Authorisations (SA) of new water supply licences, as explained in the recently published information notice.</p> <p>One option would be to remove the CTP completely, and replace it as necessary with new arrangements for the WA / SA created through the MAC and WRC framework, to avoid any overlap between the old and new market arrangements. However, we could also retain the CTP in licence conditions in a</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
				<p>modified form, at least for a transitional period, and we have included proposed draft text in Appendix 2 that would do this. We plan to consult on the WA / SA arrangements including licence conditions and the overall transition process in July/August 2016, but in the meantime we propose to retain the provisions for the wholesale element of the combined supply licences in the IoAs.</p>
	<p>Condition R 1-4 Access code</p>	<p>“Amend wording to remove access codes for retail only WSL or delete condition if obligation on access codes for combined supply sits within transition scheme.”</p>	<p>“We are likely to follow the approach outlined in the June Consultation document.</p> <p>We will develop further details on the proposed transition arrangements regarding combined</p>	<p>As stated in the December Results Document, we propose to remove these obligations from Condition R 1-4 with effect from [April 2017 (‘Go live’)] in relation to the retail market.</p> <p>For the water retail and sewerage retail market, access code provisions will be covered by the new retail market arrangements set out in the WIAA91 (as amended by the WA14) and the MAC and WRC,</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
		Table 5 in section 5.1.2 on page 35	supplies as part of the on-going work on the licence application process and transition. The additional detail will help make clear whether all of the necessary provisions can be incorporated in the transition scheme or whether there may need to be some residual obligations within the IoA. We will provide a further update on the transition arrangements no	<p>so the IoA access code provisions will no longer be required.</p> <p>However, we are still considering whether we need to retain the access codes for introductions of water, where the wholesale element of old combined licences will be succeeded by the new English Wholesale Authorisations (WA) and the Welsh Supplementary Authorisations (SA) of new water supply licences, as explained in the recently published information notice.</p> <p>One option would be to remove the access code provisions completely from the IoAs, and replace them as necessary with new arrangements for the WA / SA created through the MAC and WRC framework to avoid any overlap between the old and new market arrangements. However, we could also retain the CTP in licence conditions in a modified form, at least for a transitional period, and we have included proposed draft text in Appendix 2 that</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
			<p>later than April 2016.”</p> <p>Section 4.6, Page 30</p>	<p>would do this. We plan to consult on the WA / SA arrangements including licence conditions and the overall transition process in July/August 2016, but in the meantime we propose to retain the provisions for the wholesale element of the combined supply licences in the IoAs.</p>
<p>To help provide a level playing field between licensed retailers and the retail businesses of appointees</p>	<p>Condition F6 A.2A</p> <p>Certificate of Adequacy</p>	<p>“Amend wording to require separate certificates and align requirements on NHH certificate with those for WSSL licensees”</p> <p>Section 5.1.2 Table 5, page 34</p>	<p>“We will require a separate certificate of adequacy for non-household retail for undertakers who have chosen not to exit.</p> <p>We note companies’ concerns about increased regulatory</p>	<p>As set out in the December Results Document we propose to amend this condition to require a separate certificate of adequacy for the non-household retail business of the appointee.</p> <p>Responses to our earlier consultation produced broad agreement to this proposal, including some strong support from licensees not associated with appointed companies. Some concerns were raised about an increased regulatory burden, and it was suggested that if a separate certificate of adequacy</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
			<p>burden arising from the introduction of a separate certificate for non-household retail. However, we think it is important that all non-household retail companies should face similar obligations. We will work with the Finance and Governance programme to align information requirements and submission timetables where possible in order to minimise regulatory</p>	<p>is required, then it should be carved out of the existing requirement.</p> <p>We note the concerns about a possible increased regulatory burden on appointees, but consider that it is important for all retailers to face similar obligations. We agree that it seems sensible to carve it out from the existing obligation, to avoid duplication, and proposed draft text is included in Appendix 2.</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
			<p>burden. We agree that non-household retail can be removed from the existing obligation to produce a certificate for the whole appointed business once a separate certificate is introduced.”</p> <p>Section 4.3, page 25</p>	
Protecting customers who choose to switch to a different retailer or are	Condition Q Drought payment	“Condition Q should be amended to remove references to non-household customers as	“We will amend Condition Q as proposed. We identified a potential gap between the code and the licence	Building on what we said in the December Results Document , we have considered further the role of this condition in protecting all customers of the appointee, whether it is acting as a wholesaler or retailer, and the interaction with the updated WRC .

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
<p>moved as part of a bulk transfer</p>		<p>obligation now sits in WRC.</p> <p>Wholesaler will make payment to the retailer who will then pass onto customer promptly and in full. “</p> <p>Table 4, page 33</p>	<p>definitions with respect to ineligible non-household customers and we are reviewing the best approach to resolve this.</p> <p>There has been a change request for section 2.4.3 of the business terms in the WRC submitted to the interim code panel on 15/09/15 to include provision that where a wholesaler makes payment in respect of drought interruptions or a</p>	<p>As this condition relates to the interruption of supply, which falls under the appointee’s wholesale activities, we consider that all customers affected by a drought order should be compensated for it under the provisions of this condition, regardless of whether they are customers of the appointee’s own retail business, or if they are customers of a WSSL retailer.</p> <p>So we propose to amend this condition to include an obligation to make this payment for any business customer of a WSSL retailer that is served by the appointee on a wholesale basis and is affected by the drought order. The appointee would be required to make the payment to the relevant WSSL retailer, who would then be required to pass on the payment to the customer in accordance with the 2.4.3 of the business terms of the WRC.</p> <p>Draft text is included in Appendix 2. The proposed changes would also extend the right to ask Ofwat for</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
			<p>GSS standard, these will be passed onto customers by the retailer promptly and in full.”</p> <p>Section 4.3, page 24</p>	<p>a determination to affected business customers of licensees, so that they are not disadvantaged.</p>
<p>Better regulation – to remove any duplication or inconsistency between the IoA and the WRC and/or MAC</p>	<p>Condition G Customer Code of Practice</p>	<p>“For obligations on information provision now in the WRC, amend Condition G to only apply to domestic customers.</p> <p>Regarding complaints, we think it would be better for the Operational Terms to include the</p>	<p>“We will amend condition G, as proposed. There is an operational terms change request for Heading I and Process F5 submitted to the Interim Code Panel on 15/09/15 to include provisions for the retailer to</p>	<p>As stated in the December Results Document, we propose to amend this condition so that it would only apply to residential customers.</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
		<p>necessary provisions to inform customers about CCWater (and the WATRS scheme for independent adjudication). As this is about provision of information to customers, it should not impact on MO specifications. In the event that feedback suggests that a change to the operational terms is not readily achievable, we will develop alternative proposals through working groups.”</p>	<p>inform its non-household customers about CCWater and WATRS.</p> <p>We agree there is a potential gap between the code and the licence definitions with respect to ineligible non-household customers and we are reviewing the best way to resolve this.”</p> <p>Section 4.3, page 24</p>	<div data-bbox="1317 504 2051 911" style="border: 1px solid black; background-color: #e1f5fe; padding: 10px;"> <p>Please note: this document was updated on 10 May 2016, to remove reference to Appendix 2 here. Draft text of Condition G is not included in Appendix 2, as we propose to take this forward through the planned workshop(s) and discussions with stakeholders during the consultation.</p> </div> <p>This condition also currently includes some protections for business customers, and so it is important that these protections are included somewhere else in the legal framework, so that they are retained.</p> <p>One option would be to leave them in Condition G, but as the responses to our earlier consultation demonstrated that there is some confusion about the obligations in Condition G, we consider that they would be better placed separately somewhere</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
		Table 4, page 33		<p>suitable, which may be the WRC, the CPCoP, or in a different condition in the IoAs, as that would help to provide greater clarity for market participants about where their various obligations sit.</p> <p>We propose to take this forward through the planned workshop(s) and discussions with stakeholders during the consultation process.</p>
	Condition I Code of practice on leakage	“Part H of WRC has process for application for an allowance as a consequence of a leak and provide for the retailer to claim payments from the wholesaler. We have some concerns whether this	<p>“There was no clear consensus of views regarding Condition I.</p> <p>A number of respondents thought that the licence condition should remain unchanged in order to maintain the</p>	<p>Condition I includes procedures on checking for leakage when a meter is installed, and provisions for a one-off adjustment of the customer’s charges if there are later found to be undetected leaks after the meter has been installed. But the requirement for the appointee to have a code of practice on leakage is only applicable to residential customers.</p> <p>As stated in the December Results Document, we propose to leave this condition unchanged. However, we consider that a change to the WRC</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
		<p>provides the same protection to non-household customers as the existing obligation.</p> <p>Stakeholders' views sought whether further amendments of the code arrangements and/or Appointment condition needed to maintain obligation. “</p> <p>Table 4, page 33</p>	<p>obligation for customers. In contrast, other respondents thought that the obligations should be included in the WRC. Some responses suggested that the code provisions should be strengthened. However, others suggested that since the management of leakage could be an area of retail product differentiation, changes were not required.</p>	<p>may be required to set out the retailer's obligation to pass on any leakage adjustment to the customer, following the installation of a meter. As there are already similar provisions in the WRC requiring retailers to pass on GSS or drought payments to customers, we consider that it should be reasonably straightforward to amend those provisions to add in leakage adjustments.</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
			<p>We will maintain the condition in its current format. This will ensure that there is sufficient protection for customers but allow retailers the ability to offer retail product differentiation.”</p> <p>Section 4.3, page 24</p>	
	<p>Condition R 7-9</p> <p>Obligations about information</p>	<p>“No longer required for retail only WSL as replaced by the provisions in the WRC and the MAC. An element of obligation may still</p>	<p>“Responses supported the removal of the obligation as long as there were replacement provisions in the</p>	<p>Our thinking in this area has developed further since the December Results Document, partly as a result of some concerns that have been raised in relation to the proposed removal of the in-area trading ban, and in relation to combined supply.</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
		<p>be required for combined supplies depending on the form of the transition scheme.</p> <p>Amend or delete depending on form of transition scheme for combined supplies. “</p> <p>Section 5.1.2, Table 5 page 35</p>	<p>WRC and MAC, and provided that combined supplies are dealt with in the transition scheme.</p> <p>Given the responses to the proposal, and that confidentiality and information sharing are covered in part 2 of the WRC, we consider the equivalent obligations no longer need to remain within the IoA.”</p>	<p>Condition R contains obligations that must be considered through three separate lenses:</p> <ul style="list-style-type: none"> • Some elements of Condition R relate to operational processes, which could be moved to the WRC, which is where most of the other operational processes are set out; • Some elements relate to combined supply licenses, and so these need to be retained in some form until alternative arrangements are made for the WA/SA which will replace the wholesale aspect of combined supply licences; • Finally, elements of the condition relate to our role as an economic regulator and competition authority, and so quite rightly sit in the IoA because of the modification process. <p>As these different elements overlap, it is important that relevant obligations are retained in the IoA, at</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
				<p>least until we know what the alternative arrangements will be for the WA/SA. But as stated in the December Result Document, we recognise that any inconsistencies between the operational aspects of this condition and the relevant provisions of the WRC need to be addressed, and we propose to do this by reviewing, and if necessary, proposing changes to the WRC.</p>
<p>Providing equivalence of treatment for retailers</p>	<p>Condition F6 Arm's length trading</p>	<p>"Make clear that the obligation covers transactions between wholesale and retail, including those following an exit from non-household retail.</p>	<p>"There were few comments from respondents on this condition. Those who did respond agreed with the principle that the arm's length requirement should</p>	<p>Our thinking has developed since the December Results Document. We have further considered the two different aspects:</p> <ul style="list-style-type: none"> • Retail exit - as some responses recognised, we do not propose to make any amendments to this condition in relation to retail exit, as the current drafting already covers that situation;

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
		<p>Amend wording (detail to be confirmed following publication of Defra’s exit regulations).”</p> <p>Section 5.1.2, Table 5 page 34</p>	<p>apply. Respondents stated that since the obligation was already covers the relationship between the appointed business and any associated company, no change was necessary.</p> <p>We will maintain the position set out in the consultation document, as we consider an amendment is needed to ensure that there is clarity that the obligations apply between the</p>	<ul style="list-style-type: none"> • The role this condition may play to provide the obligations that we propose to include in the stapling condition. <p>Condition F could be amended to insert the level playing field obligations that we propose in the Stapling Condition mentioned above. We do not propose to amend these obligations about arm’s length trading, if appointees consider that a separate stapling condition is required. But changes to Condition F may be required if some of the obligations set out in the stapling condition are retained.</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
			<p>wholesale and retail business.”</p> <p>Section 4.3, page 25</p>	
Preventing anti-competitive behaviour	<p>Condition R5 (3)</p> <p>Information on relationship with licensees</p>	<p>“We are strongly minded to remove this obligation to inform Ofwat where circumstances change. We intend to rely on our ex-post powers in assessing whether there is evidence of any anti-competitive behaviour.”</p>	<p>“We will remove the obligation from Condition R. The removal of this obligation in no way alters the obligation on companies to comply with competition law. We consider that companies are best placed to understand and manage the risks around their</p>	<p>Our proposals in this area have developed to reflect some concerns raised during the recent consultation on removal of the in-area trading ban (which also reflected concerns raised in some of the original responses to our June Consultation) that removal of this obligation may adversely affect our ability to effectively exercise our ex post competition powers and regulatory role.</p> <p>Having considered this further, we now propose to leave this obligation unchanged. It does not create an undue burden on appointees as it only relates to changes in the appointee’s relationship with any licensee, and we agree that removal may impact on our ability to effectively exercise our ex ante role,</p>

Policy objective	IoA condition(s)	Original proposal in June Consultation	Statement in December Results Document	Current proposals, building on relevant consultation responses, including responses to other recent consultations
		Section 5.1.2, Table 5, page 35	relationships with licensees.” Section 4.3, page 26	especially in the early stages of the market. We plan to revisit this as the market develops.

4. New appointees and other small companies

We need to ensure that the new market arrangements are appropriate for small companies, including new appointees and other companies with a small number of eligible customers, such as Cholderton Water (collectively we refer to these as ‘small companies’ for the purposes of this consultation). At a workshop held on 11 March for these small companies, we discussed a number of issues that need to be addressed for the companies. We subsequently published the [slides](#) from that workshop for consultation.

One of the issues discussed was the extent to which broader licence changes, including the changes proposed in this consultation, are relevant to smaller companies, given their lower volume of eligible customers.

We propose that all the changes to the loAs set out in this consultation would also apply to small companies, as it is important that the same regulatory framework applies to all appointed companies. The proposed [MAC](#) and [WRC](#) are central to the new market arrangements, and so the new conditions requiring appointees to comply with them should apply to all appointees. Otherwise the market arrangements will not work effectively for customers and other market participants. Similarly, the protection for customers provided by the proposed [CPCoP](#) is essential to make sure the market works in the best interests of customers. The other changes to the existing conditions are required to update the loAs to reflect the changes in the legislation and to avoid inconsistencies or duplication between the loAs and the [MAC](#) and/or [WRC](#). We have considered whether the burden on smaller companies is proportionate to what we are trying to achieve by proposing these changes for all companies, and consider that it is, subject to some further consideration about the interaction with the central market systems, and possible derogations to the codes.

Although we note that there are some differences in new appointees’ loAs and some of the conditions are currently ‘switched off’ (e.g. condition R), by making the changes to all loAs now, it helps to future proof the loAs, so that we do not need to revisit them if a new appointee increases in size, or other triggers occur that would activate the provisions. This fits with a proportionate approach, but further consideration needs to be given to how this could work in practice. In particular, we need to consider how to make the interactions between the small companies and the central market systems proportionate.

At the workshop, participants suggested that some form of guidance on the various codes, including the [MAC](#) and the [WRC](#), would be useful. It was also suggested that if we were to allow any derogations to the codes, this would require a detailed piece

of work to identify any such derogations and how they would operate in practice. We propose to work together with MOSL and small companies over the coming months to investigate whether (and if so, the extent to which) derogations from the market codes ([WRC](#) and [MAC](#)) are possible.

In the meantime, we propose to continue with the changes to all the IoAs as outlined in this consultation.

5. Appointees wholly or mainly in Wales

For those who use the supply system of an appointed company whose area is wholly or mainly in Wales, only customers using more than 50 Ml of water each year will be able to choose their water supplier, reflecting the different policy position of the Welsh Government.

Although that means there will be fewer eligible customers in Wales who are able to engage with the retail market, it is important that the market arrangements work effectively and consistently for all eligible customers, irrespective of whether they are with a company with a small or large number of eligible customers. By replacing negotiated with regulated access we consider that the market arrangements, and the proposals included in this consultation, support [Welsh Government policy](#) in that they:

- Reduce costs by make the roles and responsibilities clear and consistent across water companies;
- Improve integration and coordination by, for example setting out procedures for separate wholesalers and retailers to work together on planned disruption and unplanned incidents; and
- Reduce regulatory burdens by increasing transparency and consistency and remove unnecessary duplication.

Where applicable the proposals are also consistent with the standard conditions for the WSSL licences which will apply in both England and Wales.

We therefore propose that the changes to the IoAs set out in this consultation would also apply to the IoAs for Welsh Water and Dee Valley Water, as well as any new appointee whose area is wholly or mainly in Wales. This will make sure that all eligible customers are covered by the same market framework. It should be noted that the proposed stapling condition would apply slightly differently for appointees wholly or mainly in Wales, as only part of the appointees' relevant retail business is contestable.

We recognise that the same proportionality issues outlined in the chapter above on small companies also apply here, so it may be necessary to consider similar derogations in some areas. We plan to do this as part of the work with MOSL on derogations outlined in Chapter 4 above.

The table below summarises the application of each of our proposals for appointees wholly or mainly in Wales:

Proposal	Application in Wales
Insert new MAC condition	<p>It is necessary for this to apply to appointees whose supply systems are wholly or mainly in Wales so that those appointees are also bound by the provisions of the MAC. The MAC includes a number of important provisions relating to the governance of the market (for example, establishing a market operator to work on behalf of all market participants to manage the arrangements set out in the WRC, and a code panel to consider possible changes to the MAC and WRC). As the WRC is a statutory code that will apply to all appointees (with some possible derogations), it is important that appointees whose supply systems are wholly or mainly in Wales are also bound by the provisions relating to the operation and possible amendment of the WRC.</p>
Insert new stapling condition	<p>This condition is necessary so that the provisions of the statutory WRC apply equally between an appointee's integrated wholesale and retail businesses as they do between the appointee's wholesale business and a separate licensed retailer. As the WRC will apply to all appointees, including appointees whose supply system is wholly or mainly in Wales, it is important that there is equivalence between the wholesaler's interactions with retailers.</p>
Insert new customer protection condition	<p>We think it is important that the relevant protections would apply to eligible customers of appointees whose systems are wholly or mainly in Wales, as explained in our recent separate consultation, but it should be noted that some of the proposed protections are aimed at protecting smaller business customers, so are unlikely to apply to eligible customers (i.e. using more than 50 MI) of appointees whose systems are wholly or mainly</p>

	in Wales, depending on how we define those smaller customers.
Amend terminology in IoAs to reflect changes in legislation	These fairly minor, housekeeping changes are required to reflect changes in legislation, so will apply as necessary to appointees whose supply systems are wholly or mainly in Wales.
Amend condition S to remove Customer Transfer Protocol (CTP) obligations	This proposed change removes the previous arrangements (although they will be retained for combined supply for the time being), as they will be replaced by the arrangements in the statutory WRC. We are considering whether any code derogations may be required for appointees with limited numbers of eligible customers, especially in relation to the interaction with the central market systems.
Amend condition R1-4 to remove access code obligations	This proposed change removes the previous arrangements (although they will be retained for combined supply for the time being), as they will be replaced by the arrangements in the statutory WRC. We are considering whether any code derogations may be required for appointees with limited numbers of eligible customers, especially in relation to the interaction with the central market systems.
Amend condition F6 A.2A to create a new obligation for a separate certificate of adequacy	This is an area where derogations may be appropriate for appointees whose supply systems are wholly or mainly in Wales, as their numbers of eligible customers are limited. We are interested in stakeholder views on whether this proposal could create an undue burden for appointees with limited numbers of eligible customers.
Amend condition Q to be clear that the obligation to compensate customers	This obligation relates to the appointee's wholesale business. There is a limited impact for appointees

<p>under the condition applies to all customers affected by a drought order, regardless of whether they are customers of the appointee's own retail business or if they are customers of a licensed retailer</p>	<p>whose supply systems are wholly or mainly in Wales, due to the limited number of eligible customers.</p>
<p>Amend condition G so that it only applies to residential customers, but retain the protections for business customers by moving them to a different part of the legal framework</p>	<p>Very limited impact on appointees whose supply system is wholly or mainly in Wales, as the obligations would be unchanged. We propose to simply move some of the obligations to a different part of the legal framework so it is easier for market participants to understand where their various obligations sit.</p>
<p>Leave condition I unchanged, but amend the WRC to require licensed retailers to pass on any leakage adjustment made under this condition</p>	<p>Limited impact on appointees whose supply systems are wholly or mainly in Wales in their capacity as a wholesaler. In some situations, they would pass the leakage adjustment to a licensed retailer to pass onto the customers, rather than dealing with all affected customers directly.</p>
<p>Amend condition F6 (as an alternative or in addition to the proposed stapling condition)</p>	<p>See above (Stapling condition).</p>
<p>Leave condition R5 unchanged</p>	<p>No impact on appointees whose supply systems are wholly or mainly in Wales.</p>

<p>Leave condition R7-9 unchanged, and update the WRC as necessary to remove any inconsistencies.</p>	<p>Some benefit for appointees whose supply systems are wholly or mainly in Wales, if any inconsistencies are removed from the WRC.</p>
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6. Interaction with retail exit timetable

As explained above, the loA covers both the wholesale and retail activities of an appointed company. The WA14, together with the draft Retail Exit Regulations, provides for appointed companies whose supply systems are wholly or mainly in England to apply to the Secretary of State for permission to exit from the business, charity and public sector retail market (it should be noted that this does not apply to appointees whose supply system is wholly or mainly in Wales). If permission is granted, the appointee would no longer be able to supply retail business customers, and those customers would be transferred to a WSSL retailer (which may be associated with the appointee). The appointee would remain a participant in the retail market as a wholesaler only, in addition to continuing to serve residential customers. This is referred to as 'retail exit'. In this chapter, we discuss the implications of retail exit for the loAs, and explain which changes would still be required if an appointed company is allowed to exit the business, charity and public sector retail market, before outlining next steps in the following chapter.

Retail exit is relevant to our considerations about proposed loA changes. If an appointee applies for permission to exit the retail market, and is permitted to do so by the Secretary of State, the conditions in their loA would need to be different to the conditions required if they remained as a participant in the retail market. Some of the proposed changes to the loA outlined in this consultation would still be required, as the appointee would continue to exercise its wholesale functions in the retail market. Other proposed changes would no longer be required as they only relate to the conduct of the appointee's retail business.

Ideally, we would wait until after any decisions by the Secretary of State on retail exit before consulting appointees on the proposed changes to their loAs, so that we could consult on the specific changes depending on whether they were exiting or not, but we need to find a pragmatic way to move forward in parallel with Defra's planned retail exit timetable. Otherwise there would not be enough time after the retail exit decisions, which are expected to take place in January 2017, for us to consult on the proposed loA changes. We want to provide as much certainty to companies about the possible loA changes as we can ahead of the formal retail exit decisions.

We are currently considering the best way to make these proposed changes without delaying the process until after the formal exit decisions. One option would be for us to use the responses to this consultation to inform the development of two different versions of the loA: one version for appointees that are not exiting, and a second version for appointees that are planning to exit. So by the time that we begin the

statutory consultation, appointees would have a clear understanding of what the proposed changes would be, depending on whether they plan to exit or not. The disadvantage of this approach is that it seems likely that we would have to wait until after that formal decision by the Secretary of State before we could implement the changes for those companies applying to exit.

Another option that would allow us to continue to progress these changes ahead of the formal exit decisions would be for us to use 'sunrise' or 'sunset' clauses in the relevant IoA conditions, to give effect to the relevant changes in the event of an exit, or decision not to exit. This option is our preferred option as it would have the advantage that we could continue to progress the proposed changes without delay, although it would mean that appointees may end up with some provisions in their IoA that do not have effect, adding unnecessary complexity to their IoAs.

We are interested in stakeholder views on these two options, and our proposal to use sunrise/sunset clauses as necessary to avoid delay and manage the uncertainties about retail exit

In the meantime, the following table provides some examples of how retail exit may affect the proposed changes:

Proposed IoA change:	Required if appointee exits?
NEW MAC condition	Yes, still required to cover wholesale activities
NEW Customer Protection Code of Practice	No, if the CPCoP only covers retail activities, as the appointee would no longer carry out retail activities in the market
Condition S – customer transfer protocol	Yes, we would still need to remove these obligations from the appointee as a wholesaler

<p>Condition – R1-4</p> <p>Access codes</p>	<p>Yes, we would still need to remove these obligations from the appointee as a wholesaler</p>
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7. Next steps

In this chapter we explain how we plan to take these changes forward, including an indicative timetable for implementing the changes.

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 considers 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.

The planned timetable is:

31 May 2016	Deadline for responses to this consultation.
May 2016	Workshop(s) (and bilateral discussions, if required)
June 2016	Analysis of responses, and finalise proposals (Ofwat Board decision)
Beginning of July 2016	Begin statutory consultation, allowing 28 days for responses
August 2016	Implement changes, by Ofwat formally notifying appointees of the modifications to their IoAs.

Note: this planned timetable assumes that we proceed with the proposed changes ahead of the retail exit decisions, using a combination of 'sunrise' and/or 'sunset' clauses in the conditions, as necessary.

Also, as explained above, the proposed changes to Condition S and R1-4 may need to be taken forward on a slightly later timetable to reflect the outcome of the separate consultation on proposals for the Wholesale Authorisation planned for the summer.

Appendix 1 – draft new conditions

Draft condition 1 - Market Arrangements Code

Obligations in relation to the Market Arrangements Code

(1) The Appointee must:

- (a) be a party to and comply with the Market Arrangements Code; and
- (b) take all steps within its power to ensure that the Market Arrangements Code remains a document that:
 - (i) is designed to facilitate principles set out in Schedule 1 of the Market Arrangements Code (the “MAC Principles”);
 - (ii) conforms to the requirements of paragraph (2) of this condition in relation to the modification of the Market Arrangements Code; and
 - (iii) makes express provision for the matters described in paragraph (3) of this condition.

Modification of 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) which shall ensure that:

- (a) change proposals for the modification of the Market Arrangements Code may be made by any member of the Panel constituted under the Market Arrangements Code pursuant to paragraph 3(d) of this condition (“**the Panel**”), by the Authority and by such other persons or bodies as may be set out in the Market Arrangements Code;
- (b) every change proposal is brought to the attention of all parties mentioned in or pursuant to paragraph (a) above;
- (c) any and all representations made in respect of a change proposal are able to be properly considered by the relevant decision makers;

(d) the question of whether any change proposal better facilitates the achievement of the MAC Principles is able to be properly evaluated by the parties to the Market Arrangements Code;

(e) change proposals require Authority approval;

(f) change proposals made by any of the parties stated in paragraph (a) which the Authority reasonably considers are necessary to comply with or implement any Applicable Law are:

(i) to be accepted into the Market Arrangements Code modification procedures by the Panel;

(ii) where they are raised by a person other than the Authority, not to be withdrawn without the Authority's prior consent; and

(iii) to proceed in accordance with any timetable(s) directed by the Authority in relation to the raising of a change proposal, the completion of relevant procedural steps and the implementation of the change proposal.

(g) a final report is prepared including:

(i) a proposed implementation date either:

A. in accordance with any direction(s) issued by the Authority under paragraph (2)(h); or

B. where no direction has been issued by the Authority under paragraph (2)(h), that would enable any proposed modification to take effect, as soon as reasonably practicable after the decision to implement it has been reached, taking into account the complexity, importance, and urgency of that modification and the most efficient timing for implementing the modification; and

(ii) a summary of and copies of all submissions made in respect of the change proposal;

(iii) an assessment of the extent to which the change proposal would better facilitate achieving the MAC Principles and a detailed explanation of the reasons for that assessment; and

(iv) an assessment of any potential impact on, or consequential amendment to, any other Retail Market Code.

(h) the proposed implementation date may be altered with the consent of or as directed by the Authority;

(i) parties to the Market Arrangements Code are able to consider and comment upon the change proposal report prepared in accordance with paragraph (g) and in particular whether the change would, as compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles;

(j) the Panel, having regard to whether the change would, as compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles, makes a recommendation to the Authority to approve or reject the proposed modification;

(k) completion of each of the procedural steps outlined in this paragraph (2) to the extent that they are relevant, is in accordance with any timetable(s) directed by the Authority;

(l) the change proposal report prepared in accordance with paragraph (g) (and submitted to the Authority pursuant to the procedures described in paragraph (g)) can be revised and resubmitted upon, and in accordance with, a direction issued to the Panel by the Authority where the Authority determines that it cannot properly form an opinion on the approval of the change proposal;

(m) any proposals to modify the Market Arrangements Code must be designed to better facilitate the achievement of the MAC Principles; and

(n) no modification of the Market Arrangements Code may be made unless the Authority, having had regard to the MAC Principles, directs the Appointee, in conjunction with every other Appointee and Licensee, to modify the Market Arrangements Code in such manner as is stated in that direction.

Contents of the Market Arrangements Code

(3) The Market Arrangements Code shall make express provision in relation to the following matters:

(a) the creation of an agreement, to which the Appointee, every other Appointee, and every Licensee shall be a party, and which binds the Appointee to comply with the terms of the Market Arrangements Code (the **“MAC Framework Agreement”**);

(b) the referral for determination by the Authority of any dispute arising as to whether a person seeking to be admitted as a party to the MAC Framework

Agreement has fulfilled such trading conditions as are set out in the MAC Framework Agreement;

(c) terms that provide for the Appointee and such other parties to the MAC Framework Agreement to be contractually bound by some or all of the provisions of the Market Arrangements Code;

(d) arrangements for establishing and maintaining a Panel which is to be responsible, by way of such proceedings as may be set out in the Market Arrangements Code, for the governance and administration of the Market Arrangements Code and whose members are to be required as a condition of their appointment or election to act independently and not as delegates;

(e) arrangements for the establishment and funding at all times of a body to perform the role of Market Operator fulfilling the functions set out in the Market Arrangements Code; and

(f) a process by which the Panel can make recommendations to the Authority in relation to modifications of any code issued pursuant to section 66DA of the Act and/or section 117F of the Act.

Draft condition 2 - Customer Protection Code of Practice

(1) The appointee must comply with the Customer Protection Code of Practice.

(2) The Customer Protection Code of Practice shall contain the procedure for its own modification.

Draft condition 3 – Application of Wholesale Retail Code (Stapling condition) – clean version

Interpretation

In this Condition:

- “Eligible Premises”** shall have the meaning given in the Wholesale-Retail Code **“Retail Activities”** shall have the meaning given in Condition B of this Instrument of Appointment
- “Retail Business”** means the part of the Appointed Business which carries out Retail Activities
- “Wholesale Activities”** shall have the meaning given in Condition B of this Instrument of Appointment
- “Wholesale Business”** means the part of the Appointed Business which carries out Wholesale Activities

Arrangements between Appointee’s Wholesale Business and Retail Business

If the Appointee carries out Retail Activities in relation to Eligible Premises in its Area of Appointment, the Appointee shall:

1. subject to the provisions of these Conditions in particular conditions F and R, undertake any such activities between its Wholesale Business and its Retail Business as if:
 - (a) the Appointee had entered into an agreement with the holder of a water supply licence and/or a sewerage licence pursuant to s66D and/or s117E of the Act (regardless of whether any such agreement exists or not), and
 - (b) the Appointee’s Wholesale Business and its Retail Business were, in fact, held in separate legal entities, and the Retail Business held a water supply licence and/or sewerage licence;
2. put in place written arrangements in relation to any such activities between its Wholesale Business and its Retail Business which are consistent with the terms of paragraph [1] of this Condition;
3. provide the Authority upon request with evidence of the written arrangements put in place pursuant to paragraph [2] of this Condition; and

4. apply to the written arrangements put in place pursuant to paragraph [1] of this Condition any code or codes issued by the Authority from time to time pursuant to s66DA and/or s117F of the Act, provided that:
- (a) said code or codes shall be read and construed in accordance with Schedule 8 to the Market Arrangements Code, and
 - (b) Schedule 8 to the Market Arrangements Code shall be treated by the Appointee as a derogation from complying in full with the particular terms of said code or codes only to the extent set out in the said Schedule 8.

Draft condition 3 – Application of Wholesale Retail Code (Stapling condition) – changes marked

Interpretation

In this Condition:

- “**Eligible Premises**” shall have the meaning given in the Wholesale-Retail Code. “**Retail Activities**” shall have the meaning given in Condition B of this Instrument of Appointment
- “**Retail Business**” means the part of the Appointed Business which carries out Retail Activities
- “**Wholesale Activities**” shall have the meaning given in Condition B of this Instrument of Appointment
- “**Wholesale Business**” means the part of the Appointed Business which carries out Wholesale Activities

Deleted: Introduction

The purpose of this Condition is to ensure that, where the Appointee chooses not to exercise its right to exit pursuant to the [Retail Exit Regulations], it will participate in the market arrangements implemented pursuant to Part 1 of the Water Act 2014, in particular any codes issued pursuant to s66DA and/or s117F of the Act.

Deleted: “Eligibility Guidance” means:¶
any guidance issued by the Authority under paragraph 10(1) of Schedule 2A or paragraph 4 of Schedule 2B of the Act in relation to the factors that are, or are not, to be taken into account in determining the extent of any particular premises; and/or ¶
(ii) any regulations made by the Secretary of State under section 17C(3) of the Act as to the circumstances or factors which relate to the use of any premises, together with any further guidance as to the identification or designation of a customer and/or premises which the Secretary of State or the Authority may issue from time to time.¶

Deleted: means premises other than Household Premises and which may be identified as eligible premises in light of any Eligibility Guidance¶

Deleted: “unrelated legal entities” means enterprises which are not under common ownership or common control (within the meaning those expressions have in section 26(1) of the Enterprise Act 2002) ¶

Arrangements between Appointee's Wholesale Business and Retail Business

If the Appointee carries out Retail Activities in relation to Eligible Premises in its Area of Appointment, the Appointee shall:

1. subject to the provisions of these Conditions in particular conditions F and R, undertake any such activities between its Wholesale Business and its Retail Business as if:

Deleted: carry out

(a) the Appointee had entered into an agreement with the holder of a water supply licence and/or a sewerage licence pursuant to s66D and/or s117E of the Act (regardless of whether any such agreement exists or not), and

(b) the Appointee's Wholesale Business and its Retail Business were, in fact, held in separate legal entities, and the Retail Business held a water supply licence and/or sewerage licence;

Deleted: and unrelated

2. put in place written arrangements in relation to any such activities between its Wholesale Business and its Retail Business which are consistent with the terms of paragraph [1] of this Condition;
3. provide the Authority upon request with evidence of the written arrangements put in place pursuant to paragraph [2] of this Condition; and
4. apply to the written arrangements put in place pursuant to paragraph [1] of this Condition any code or codes issued by the Authority from time to time pursuant to s66DA and/or s117F of the Act, provided that:

(a) said code or codes shall be read and construed in accordance with Schedule 8 to the Market Arrangements Code, and

(b) Schedule 8 to the Market Arrangements Code shall be treated by the Appointee as a derogation from complying in full with the particular terms of said code or codes only to the extent set out in the said Schedule 8.

Appendix 2 - Draft changes to existing conditions

Please note: proposed changes to the existing conditions are marked in track changes in this Appendix, for ease of reference

Condition S: Customer transfer protocol

Deleted: ¶

This Condition is deleted for the purposes of the new retail market and will not be applicable for those purposes with effect from [April 2017 ('Go live')] in this Instrument of Appointment. This Condition is retained in this Instrument of Appointment for the limited purpose of the Combined Supply Licence regime until such regime is superseded.

- 1 For the purposes of this condition -
 - (a) **"the Protocol"** means the **"Customer Transfer Protocol"** -
 - (i) complying with the requirements of paragraphs 3 to 6 below;
 - (ii) served by the Authority on the Appointee on or after the date on which this condition comes into force; and
 - (iii) as subsequently amended from time to time in accordance with this Condition; and
 - (b) until the coming fully into force of section 36 (1) of the Water Act 2003 (transfer to the Water Services Regulation Authority and the Consumer Council for Water of functions, property etc), any reference to the Authority in this Condition shall have effect as if it were a reference to Director.
- 2 The Appointee shall comply with the Protocol.
- 3 The Protocol shall provide a clear, simple and standardised process for the timely and efficient transfer of supplies to premises of customers-
 - (a) between any water undertaker and any licensed water supplier; and
 - (b) between any two licensed water suppliers.

4 The Protocol shall -

- (a) make the same provision for all of the transfers referred to in paragraph 3 above; and
- (b) include provisions for its amendment which shall -
 - (i) allow the Authority and such other persons as the Protocol shall specify to propose amendments;
 - (ii) subject to (iii) below, require the agreement of the Authority and such majorities, as the Protocol shall specify, of water undertakers and of licensed water suppliers, before any amendment can be made; and
 - (iii) in the case of such disagreements as the Protocol shall specify, about any amendment to the Protocol which has been proposed other than by the Authority, allow the Authority to determine whether that amendment shall be made.

5 The Protocol shall include provisions to the effect that, where -

- (a) any water undertaker or licensed water supplier ("**the old supplier**") is supplying water to premises of a customer;
- (b) that customer has failed to pay the old supplier's charges for that supply;
- (c) those charges have been demanded by notice served on the customer; and
- (d) they have remained unpaid for 30 days or more after the date of that notice,

the old supplier may suspend the transfer of the supply of water to those premises of that customer until satisfactory provision has been made for the outstanding debt to be paid to the old supplier.

- 6 Where the Authority so determines, the Protocol shall provide for such matters as are specified or are of a type specified in the Protocol to be referred to and determined by the Authority.

Condition R: Provision of combined and wholesale water supplies

The Access Code

Paragraphs 1- 4 of this Condition are deleted for the purposes of the new retail market and will not be applicable for those purposes with effect from [April 2017 ('Go live')] in this Instrument of Appointment. Paragraphs 1- 4 of this Condition are retained in this Instrument of Appointment for the limited purpose of the Combined Supply Licence regime until such regime is superseded.

- 1 (1) The Appointee shall have an Access Code which complies with paragraphs 2 to 4 of this condition.
- (2) The Appointee shall comply with its Access Code.
- 2 (1) The Access Code shall -
 - (a) conform to the guidance for the time being issued under section 66D(4);
and
 - (b) set out -
 - (i) the Appointee's procedure (including timetables) for dealing with a request made to it by a licensed water supplier under sections 66A, 66B or 66C (which procedure shall itself conform to any relevant guidance);
 - (ii) the types of feasibility studies which the Appointee may undertake in response to any of those possible applications, including the method of calculation of any costs associated with any such study with a view to recovering them from any such applicant (all of which feasibility studies and the method of

calculation shall themselves conform to any relevant guidance);
and

- (iii) the terms (including the basis for calculating charges in accordance with the costs principle in section 66E) upon which the Appointee will offer to perform each duty under sections 66A to 66C and indicative charges for performing each duty under sections 66A and 66B (which indicative charges shall themselves be calculated in accordance with any relevant guidance).

- (2) In this paragraph and in paragraph 3 below, "relevant guidance" means guidance -

- (a) in relation to the matters specified in sub-paragraph (1)(b) above;
- (b) for the time being issued by the Authority where -
 - (i) before issuing such guidance, the Authority has consulted such persons as it considers appropriate; and
 - (ii) the Authority has published such guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

- 3 (1) Subject to sub-paragraph (2), the Appointee -

- (a) shall review its Access Code, and make any revisions to its Access Code consequent upon that review, annually not later than 15 October in each year; and
- (b) may also at any other time revise it.

- (2) If the Authority revises its guidance under section 66D(4), the Appointee shall revise its Access Code to conform to the revised guidance within the timescales set out by the Authority.

- (3) If the Authority revises any relevant guidance, the Appointee shall revise its Access Code to conform to such revised relevant guidance, within the timescales set out by the Authority, provided that the Authority has -
- (a) consulted such persons as it considers appropriate before revising that relevant guidance; and
 - (b) published that revised relevant guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- 4 (1) The Appointee shall -
- (a) include the text of its Access Code, as revised from time to time, on any Internet website which it may maintain; and
 - (b) in response to any request, provide a copy of it free of charge.
- (2) The Appointee shall provide to the Authority -
- (a) free of charge a copy of its Access Code; and
 - (b) within seven days of making them, written particulars of any modifications of it.

Anti-competitive behaviour

- 5 (1) If and for so long as the Appointee is related to any licensed water supplier -
- (a) it shall not without the consent of the Authority sell (or otherwise make available) to that licensed water supplier any water, or any of its other assets; and
 - (b) otherwise, it shall ensure that every other transaction between the Appointed Business and that licensed water supplier is at arm's length.
- (2) For the purpose of this paragraph the Appointee is related to a licensed water supplier if their enterprises are under common ownership or common control

(within the meaning those expressions have in section 26(1) of the Enterprise Act 2002).

- (3) The Appointee shall by notice inform the Authority if at any time it becomes, or ceases to be, related to a licensed water supplier.
 - (4) This paragraph is without prejudice to anything contained in paragraph 6 of Condition F (Transactions entered into by the Appointee or the Appointed Business with or for the benefit of Associated Companies or other businesses or activities of the Appointee).
- 6 The Appointee shall not show undue preference towards, or undue discrimination against -
- (a) customers or potential customers (or classes of customers) of a licensed water supplier, as compared with either the Appointee's own customers or potential customers (or classes of customers) or the customers or potential customers (or classes of customers) of any other licensed water supplier; or
 - (b) a licensed water supplier, as compared with any other licensed water supplier or the Appointee itself.

Obligations about information

- 7 (1) Whenever the Appointee is -
- (a) negotiating with a licensed water supplier the period for which and terms and conditions on which it might discharge any of its duties under sections 66A to 66C; or
 - (b) discharging any of those duties,
- it shall ensure that legally enforceable terms exist about the confidentiality of information provided to or by it for those purposes.
- (2) Without prejudice to the generality of sub-paragraph (1) above, the Appointee shall not use or disclose information received from or in relation to a licensed

water supplier in the course or contemplation of the discharge of its duties under sections 66A to 66C or in the course or contemplation of its dealings with or in relation to that licensed water supplier under sections 66A to 66C, except -

- (a) for the purpose for which it was furnished and to the minimum extent necessary to discharge those duties or for those dealings;
 - (b) where required or permitted by law; or
 - (c) where otherwise agreed with the licensed water supplier.
- (3) Without prejudice to the generality of sub-paragraph (1) and (2) above, and subject to sub-paragraphs (2)(a), (b) and (c) above, the Appointee shall ensure that information received from or in relation to a licensed water supplier in the course or contemplation of the discharge of its duties under sections 66A to 66C or in the course or contemplation of its dealings with or in relation to that licensed water supplier under sections 66A to 66C is not used or disclosed or otherwise distributed or disseminated within the Appointed Business otherwise than for the purposes for which the information was furnished.
- (4) (a) The Appointee shall have a Compliance Code which complies with Compliance Guidance issued by the Authority.
- (b) Compliance Guidance means guidance -
- (i) in relation to the matters specified in this paragraph; in relation to the Appointee's compliance with its obligations under this paragraph and under paragraph 5(1)(b) above; and generally in relation to any obligation of confidentiality on the Appointee in relation to information provided to or by it under or for the purposes of this Condition or Condition S, and its compliance with those obligations; and
 - (ii) for the time being issued by the Authority where -
 - a. before issuing such guidance, the Authority has consulted such persons as it considers appropriate; and

- b. the Authority has published such guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
 - (c) Subject to sub-paragraph (d) below, the Appointee -
 - (i) shall review its Compliance Code annually not later than the anniversary of the date upon which Compliance Guidance is first issued by the Authority; and
 - (ii) may at any time revise it.
 - (d) If the Authority revises its Compliance Guidance, the Appointee shall revise its Compliance Code to conform to such revised guidance, within the timescales set out by the Authority, provided that the Authority has -
 - (i) consulted such persons as it considers appropriate before revising that Compliance Guidance; and
 - (ii) published that Compliance Guidance in such a manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- 8 (1) The Appointee shall provide to a licensed water supplier such information as the licensed water supplier reasonably requires -
 - (a) to enable the licensed water supplier to apply for, negotiate and conclude an agreement under section 66D;
 - (b) to comply with any condition of its water supply licence, or any statutory requirement imposed in consequence of its water supply licence; or
 - (c) to comply with any reasonable request for information made by the Environment Agency.

- (2) The Appointee may impose reasonable conditions on the use which any licensed water supplier makes of information provided under this paragraph.
- (3) Any question as to the reasonableness of -
- (a) any requirement to provide information under sub-paragraph (1); or
 - (b) any condition proposed by the Appointee under sub-paragraph (2);
- shall be resolved by referring that question to the Authority for its determination.
- (4) A reference under sub-paragraph (3) shall have the effect of suspending the requirement so referred pending the Authority's determination.
- (5) The Appointee shall not be required under this paragraph to disclose any information or produce any document which it would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court.
- (6) (a) The Appointee shall immediately inform the licensed water supplier of relevant details if the Appointee is or becomes aware that a special consumer occupies or is likely to occupy any premises which the licensed water supplier is proposing to supply.
- (b) For the purpose of sub-paragraph (a) above, a special consumer is a person or a member of a class of persons who -
- (i) the Appointee and the relevant licensed water supplier agree; or
 - (ii) the Authority specifically or generally determines by relevant notice,
- regularly requires water urgently on medical or other grounds.
- (7) Under sub-paragraph (6) -

- (a) a determination shall not have effect unless, before making the determination, the Authority has consulted such persons as it considers appropriate; and
 - (b) a "relevant notice" is a notice published in such manner as the Authority considers appropriate and served on the Appointee.
- (8) (a) The Appointee shall immediately inform each licensed water supplier which is supplying water to premises in its Water Supply Area of every actual or potential incident which affects adversely, or is likely to affect adversely -
- (i) water quality;
 - (ii) water pressure;
 - (iii) continuity of supply; or
 - (iv) any other matter related to the Appointee's supply system as defined in section 17B(5);
- but the foregoing obligation applies only if and to the extent that the supply or supplies being made by such licensed water supplier to premises in the Appointee's Water Supply Area is or are, or is or are likely to be, affected by any such actual or potential incident; and
- (b) information provided by the Appointee under sub-paragraph (a) above shall be as detailed as the information which the Appointee uses or intends to use or would use, when dealing with complaints from its own customers arising out of the same matters.
- (9) For the purposes of sub-paragraph (8), an incident includes regulatory infringements which may put the Appointee or relevant licensed water supplier at risk of supplying water which is unwholesome as determined under section 67 (standards of wholesomeness) or unfit for human consumption within the meaning of section 70 (offence of supplying water unfit for human consumption).

9 In so far as the provision of information to the Appointee is not provided for by or under any enactment, the Appointee shall not seek -

- (a) from a licensed water supplier; or
- (b) from a person supplied or seeking to be supplied by a licensed water supplier;

more information than the Appointee reasonably requires -

- (i) for the purposes of carrying out its functions;
- (ii) to ascertain whether the licensed water supplier has sufficient product and public liability insurance for the activities authorised by its water supply licence;
- (iii) to comply with any condition of the Appointee's appointment;
- (iv) in relation to national security or civil emergencies; or
- (v) to comply with any reasonable request for information made by the Environment Agency.

General

10 (1) Until the coming fully into force of section 36(1) of the Water Act 2003 (transfer to the Water Services Regulation Authority and the Consumer Council for Water of functions, property etc), any reference to the Authority in this Condition shall have effect as if it were a reference to the Director.

(2) Unless the contrary intention appears, references in this Condition to sections are references to sections of the Water Industry Act 1991.

Condition F: Accounts and accounting information

1 [Not used]

1.1 Introduction

The purposes of this Condition are to ensure that:

- (1) the financial affairs of the Appointed Business can be assessed and reported on separately from other businesses and activities of the Appointee, as if its sole business consisted of being a water undertaker and/or sewerage undertaker having its equity share capital listed on the International Stock Exchange of United Kingdom and Republic of Ireland Ltd [London Stock Exchange plc];
- (2) information on revenues, costs, assets and liabilities attributable to specified activities of the Appointed Business can be provided and reported on;
- (3) transactions between the Appointed Business and any other business or activity of the Appointee or any Associated Company can be assessed and reported on;
- (4) there is no cross-subsidy between the Appointed Business and any other business of the Appointee or between the Appointed Business and any Associated Company;
- (4A) the transfer of assets (including the provision of financial support) to Associated Companies does not adversely affect the Appointee's ability to carry out its functions as a water and sewerage undertaker or to finance those activities;
- (5) the Water Services Regulation Authority is furnished with regular accounting and other information to enable it to compare the financial position and performance (including, without limitation, costs) of the Appointed Business and of so much of the respective businesses and activities of all other undertakers holding appointments made under Chapter I of Part II of the Water Industry Act 1991 as consists of the carrying out of the Regulated Activities; and

- (6) the Appointee has at its disposal sufficient financial and managerial resources to carry out the Regulated Activities (including the investment programme necessary to fulfil its obligation under the Appointment(s)).

[...]

6 Transactions entered into by the Appointee or the Appointed Business with or for the benefit of Associated Companies or other businesses or activities of the Appointee

6.1 The Appointee shall ensure that every transaction between the Appointed Business and any Associated Company (or between the Appointed Business and any other business or activity of the Appointee) is at arm's length, so that neither gives to nor receives from the other any cross-subsidy.

6.2 Subject to sub-paragraphs 6.3 to 6.7, accounting statements prepared under paragraph 4 shall disclose in relation to each transaction of a description specified in the first column of the Appendix to this Condition which took place during the financial year to which those statements relate, the company or, as the case may be, the business or activity which was party to the transaction with the Appointee or, as the case may be, the Appointed Business or which otherwise benefited from the transaction and the information in relation to that transaction specified in the second column of that Appendix.

6.3 Subject to sub-paragraph 6.4, any amount required to be disclosed in relation to a transaction specified in paragraph 3, 4, 5, or 6 of the Appendix may be aggregated with any amount relating to any other transaction falling within the same paragraph with the same company or other business or activity of the Appointee.

6.4 Subject to sub-paragraph 6.7, if the amount to be disclosed under sub-paragraph 6.2 in respect of any single transaction between the Appointee and any Associated Company (or between the Appointed Business and any other business or activity of the Appointee) exceeds 0.5% of the turnover of the Appointed Business, or £100,000, whichever is the greater, then that transaction shall not be aggregated under sub-paragraph 6.3 and the Appointee shall include in any accounting statement prepared under paragraph 4 the information about that transaction which is specified in the Appendix in relation to a

transaction of that kind and which complies with any guidelines issued by the Water Services Regulation Authority for this purpose.

- 6.5 The Appointee shall, when submitting accounting statements prepared under paragraph 4 to the Water Services Regulation Authority, report to it the turnover of any Associated Company with which the Appointed Business has undertaken any transaction of any kind specified in the Appendix.
- 6.6 Nothing in sub-paragraph 6.2 shall require the disclosure of any information if the aggregate of any amounts required to be disclosed under paragraphs 3, 4, 5 and 6 of the Appendix relating to transactions with the same company or other business or activity of the Appointee is not material to the Appointed Business as a whole. For the avoidance of doubt, if the aggregate of such amounts is material to the Appointed Business as a whole then information shall be disclosed in accordance with this paragraph 6 and the Appendix in relation to each such transaction (subject always to sub-paragraph 6.3). For the purpose of this sub-paragraph 6.6 the question whether an amount is material to the Appointed Business as a whole shall be determined by the Auditors by reference to whichever is the greater of:
- (1) The book value of the asset or liability the subject of, or affected by, the transaction; and
 - (2) The consideration or other charge given, paid or waived.
- 6.7 Nothing in this paragraph 6 or the Appendix shall require the disclosure of information which relates solely to a transaction wholly unconnected with the Appointed Business.
- 6.8 The Appointee shall not, in respect of any Charging Year, make any payments to any Associated Company in respect of the services rendered to the Appointee by that company, which exceeds:
- (i) such prices in respect of the service in question which the Appointee has ascertained by market testing in accordance with such arrangements as the Water Services Regulation Authority may have approved for the purpose of this paragraph 6 and as set out in Regulatory Accounting Guideline 5 (Transfer Pricing in the Water and Sewerage Industry) or any revision or modification of

it for the time being in force, provided that those arrangements have no prejudicial effect upon the proper carrying out of the Appointee's functions or any of them; or

- (ii) if, in the opinion of the Water Services Regulation Authority, the Appointee has demonstrated that market testing as described in (i) above is inappropriate, such proportion as the Water Services Regulation Authority may agree of the Associated Company's costs in providing to the Appointee the service in question (including a reasonable return to the Associated Company).

[....]

Ring-Fencing

6A.1 The Appointee shall at all times act in the manner best calculated to ensure that it has adequate:

- (a) financial resources and facilities;
- (b) management resources; and
- (c) systems of planning and internal control

to enable it to secure the carrying out of the Regulated Activities including the investment programme necessary to fulfil its obligations under the Appointment(s). The above requirements must not be dependent upon the discharge by any other person of any obligation under, or arising from, any agreement or arrangement under which that other person has agreed to provide any services to the Appointee in its capacity as a Relevant Undertaker.

6A.1 (1A) For the purposes of sub-paragraph 6A.1(1)(c) above, the Appointee shall ensure that its systems of planning and internal control comply with such guidance as the Water Services Regulation Authority may, from time to time, specify in writing for the purposes of this Condition.

(1B) Paragraph 10 in this Condition F (Guidelines and references to the Competition Commission [Competition and Markets Authority]) shall apply to the guidance

referred to in sub-paragraph 6A.1(1A) above, as it applies to the guidelines mentioned in sub-paragraph 10.1.

6A.2A. The Appointee shall, at the same time as it complies with sub-paragraph 9.3 (submission of Accounting Statements) submit to the Water Services Regulation Authority separate, Certificates in respect of each of its retail business and its wholesale business in the following terms:

Deleted: a

- "(1) that in the opinion of the Directors, the Appointee will have available to it sufficient financial resources and facilities to enable it to carry out, for at least the next 12 months, the Regulated Activities (including the investment programme necessary to fulfil the Appointee's obligations under the Appointment(s));
- (2) that in the opinion of the Directors the Appointee will, for at least the next 12 months, have available to it -
 - (a) management resources; and
 - (b) methods of planning and internal control

which are sufficient to enable it to carry out those functions as required by sub-paragraph 6A.1(1) above; and

- (3) in respect of the wholesale business only, that in the opinion of the Directors, all contracts entered into with any Associated Company include all necessary provisions and requirements concerning the standard of service to be supplied to the Appointee, to ensure that it is able to meet all its obligations as a water and a sewerage undertaker,"

“retail activities” shall have the meaning given in Condition B of this Instrument of Appointment

“retail business” means the part of the Appointed Business which carries out Retail Activities

“wholesale activities” shall have the meaning given in Condition B of this Instrument of Appointment

“wholesale business” means the part of the Appointed Business which carries out Wholesale Activities

- 6A.2B (1) The Appointee shall, when it complies with sub-paragraph 6A.2A, submit with each Certificate a statement of the main factors which the directors have taken into account in giving that Certificate.
- (2) Without prejudice to sub-paragraph 6A.3 below, the Directors shall inform the Water Services Regulation Authority in writing as soon as they become aware of any circumstances which causes them to believe that the most recent Certificate under sub-paragraph 6A.2A could not be repeated in the light of that circumstance.
- 6A.3 (1) Whenever the Directors become aware that the Appointee or any Group Company is proposing to embark upon any activity which is not one of those described in sub- paragraph 6A.1 and which may be material in relation to the Appointee's ability to finance the carrying out of the functions mentioned in that sub-paragraph, they shall as soon as practicable, having regard to the purposes of this Condition, notify the Water Services Regulation Authority about that proposal.
- (2) Not later than 14 days after the Directors become aware that the Appointee or any group Company has embarked upon any activity to which sub-paragraph 6A.3(1) applies, they shall submit to the Water Services Regulation Authority a Certificate in the terms specified in sub-paragraph 6A.2(A).
- 6A.4 (1) Each Certificate under sub-paragraph 6A.2A and 6A.2B or 6A.3 shall be either -
- (a) signed by the Directors of the Appointee for the time being; or

- (b) approved by a duly-convened meeting of the board of Directors of the Appointee for the time being, signed (in confirmation of that approval) by a Director or the Secretary of the Appointee and have attached to it a certified copy of an extract of the minutes of the relevant meeting containing the resolution to approve it.
- (2) Each Certificate under sub-paragraph 6A.2A, shall be accompanied by a report prepared by the Appointee's Auditors and addressed to the Water Services Regulation Authority, stating whether they are aware of any inconsistencies between that certificate and either the statements referred to in sub-paragraph 9.3 or any information which the Auditors obtained in the course of their work as the Appointee's Auditors and, if so, what they are.
- (3) Each Certificate under sub-paragraph 6A.2A(2) shall be accompanied by a report prepared by the Appointee's Reporter and addressed to the Water Services Regulation Authority, setting out the Reporter's opinion about the extent to which the Appointee has, during the preceding 12 months complied with its obligation in sub-paragraphs 6A.1(1)(c) and 6A.1(1A).

6A.5A The Appointee shall, at all times, conduct the Appointed Business as if it were substantially the Appointee's sole business and the Appointee were a separate public limited company. The Appointee should have particular regard to the following in the application of this Condition:-

- (a) the composition of the Board of the Appointee should be such that the directors, acting as such, are able to act independently of the parent company or controlling shareholder and exclusively in the interests of the Appointee;
- (b) the Appointee must ensure that each of its Directors must disclose, to the Appointee and the Water Services Regulation Authority, conflicts between duties of the Directors as Directors of the Appointee and other duties;

- (c) where potential conflicts exist between the interests of the Appointee as a water and a sewerage undertaker and those of other Group Companies, the Appointee and its Directors must ensure that, in acting as Directors of the Appointee, they should have regard exclusively to the interests of the Appointee as a water and a sewerage undertaker;
- (d) no Director of the Appointee should vote on any contract or arrangement in which he has an interest by virtue of other directorships. This arrangement should be reflected in the Articles of Association of the Appointee;
- (e) the Appointee should inform the Water Services Regulation Authority without delay when:
 - (i) a new Director is appointed;
 - (ii) the resignation or removal of a Director takes effect; or
 - (iii) any important change in the functions or executive responsibilities of a Director occurs.

The Appointee should notify the Water Services Regulation Authority of the effective date of the change and, in the case of an appointment, whether the position is executive or non-executive and the nature of any specific function or responsibility;

- (f) the dividend policy adopted by the Appointee and the implications of sub-paragraph 6.12 of this Condition F; and
- (g) the Principles of Good Governance and Code of Best Practice (or any successor document having a similar purpose and content) as may from time to time be incorporated into or approved for the purposes of the Listing Rules of the Financial Services Authority.

Condition Q: Interruptions in Supply because of Drought

1 Interpretation

"**business customer**" means the person who is liable to pay the Appointee's charges in respect of a supply of water to premises other than domestic premises and for these purposes includes the customers of a licensee with whom the Appointee has an agreement under s66D Water Industry Act 1991;

"**drought order**" means an order made under section 73 of the Water Resources Act 1991;

"**household customer**" means the person who is liable to pay the Appointee's charges in respect of a supply of water to domestic premises.

2 Liability and amounts of payments

2.1 Where a supply of water to premises is interrupted or cut off under the authority of a drought order the Appointee shall, subject to sub-paragraph 2.2, pay to the customer (or credit to his account) whichever of the amounts referred to in paragraph 3 is applicable.

2.2 The Appointee shall not be liable to make any payments under this Condition where the circumstances were so exceptional that it would have been unreasonable to have expected the interruption or cut-off to have been avoided.

3 Amounts payable to household and business customers

3.1 [Not used]

3.1.1 The Appointee shall pay to a household customer £10 for each day during which (or during part of which) the supply is interrupted or cut off.

3.1.2 The amount payable to any household customer in any Charging Year shall not exceed the average amount of water charges payable to the Appointee by household customers for the Charging Year preceding that in which the interruption or cut-off happens.

3.2 [Not used]

3.2.1 The Appointee shall pay to a business customer £50 for each day during which (or during part of which) the supply is interrupted or cut off.

3.2.2 The amount payable to any business customer in any Charging Year shall not exceed

(a) the amount of water charges payable by that customer for the supply of water to those premises for the Charging Year preceding that in which the interruption or cut-off happens or

(b) if that customer was not liable to pay those charges, £500.

3.2.3 When calculating the charges payable by a business customer for the supply of water services, amounts payable in respect of any separate supply which was provided solely for purposes other than domestic purposes shall be excluded.

3.3 If, when a payment becomes due under this Condition, a customer owes money to the Appointee and the debt has been outstanding for more than 6 weeks, any payment from the Appointee to which the customer is entitled under this Condition shall, to the extent that it does not exceed the amount so owed, be made by way of credit to that customer's account.

4 Determination of Disputes

4.1 Where any dispute arises between the Appointee and a customer as to the right of that customer to a payment or credit under this Condition, the matter may be referred to the Director [Water Services Regulation Authority] by either party for determination.

4.2 Any determination under this Condition shall be final and, if the Appointee fails to give effect to the determination, the customer may set off the amount in question against any payment which is due to the Appointee.

5 Cessation or Modification of this Condition

5.1 This Condition shall cease to have effect in relation to any interruptions or cut-offs occurring on or after the commencement date of any Regulations made by the Secretaries of State pursuant to Section 38 of the Water Industry Act 1991,

implementing the recommendations made to them by the Director in May 1996 for the making of payments to customers for interruptions or cut-offs because of drought.

- 5.2 If the Regulations referred to in sub-paragraph 5.1 relate to either household customers or business customers only, this Condition shall cease to have effect in so far as it relates to those customers.

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

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