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Our ref:

Retail Market Opening Programme
Ofwat
21 Bloomsbury Street
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By email:

8 August 2016

Dear Ruth

PROPOSALS TO MODIFY INSTRUMENTS OF APPOINTMENT UNDER SECTION 55: A CONSULTATION

South West Water is pleased to provide comment on the final proposals for the licence modifications required to prepare for the opening of the non-household retail market in April 2017.

We are supportive of the opening of the retail market and acknowledge that the WIA2014 provides for Ofwat to utilise the Section 55 of the Act to implement the necessary changes to Instruments of Appointment (IOA). In view of the timetable for market opening a section 55 modification will ensure that the objectives are achieved within the available timescale. We note that the amendments will not become effective until market opening and agree with the proposal.

In reviewing the proposals we have considered how the proposed modifications in the generic text against our own IOA. While we do not believe that the proposals would detrimentally affect South West Water, we note that the proposal for the separate certificate of adequacy within condition F6A.2A is infeasible in our case as the condition no longer exists, having been replaced by condition P in our new licence. We would be pleased to discuss with Ofwat how this might be addressed to meet the timetable of end of August.

We have also considered Ofwat's request for views on how best to take forward updating condition G. We are supportive of this condition being considered by the simplification working group. This group is already mindful that some conditions, for example condition B, will require more thought than other less complex conditions, and it is appropriate for condition G to be treated in the same manner as other conditions that will require wider consideration.

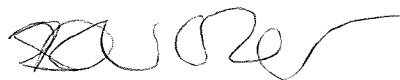
Once retail exit decisions have been confirmed by the Secretary of State Ofwat's intention to review the dormant conditions in exited companies' licences is also welcomed. We would further encourage a regular review of the Market Arrangements Code (MAC) condition to assess whether, when it is activated and working alongside the market, it remains proportionate for its purpose or whether it should be revised to text which recognises the governance arrangements that already exist within the MAC.

In the absence of specific consultation questions we have structured our response to the final proposals in the same manner as the consultation document itself. This is laid out in Appendix 1.

In closing, we have welcomed the way in which Ofwat has approached engagement with companies on the matter. The transparent and inclusive way in which the work has been undertaken has encouraged full and open dialogue surrounding the modifications that are required. This has facilitated the smooth running of the process.

We look forward to continuing ongoing engagement regarding licence modification and simplification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Iain Vosper', with a long horizontal flourish extending to the right.

Iain Vosper
Regulatory Director

APPENDIX 1: SOUTHWEST WATER COMMENTS ON MODIFICATION PROPOSALS

PROPOSED NEW CONDITIONS

	Ofwat proposal	South West Water Comment
MAC condition	<p>This will give effect to the MAC. As it is not a statutory code, we need to give effect to the MAC via the retail Water Supply and Sewerage Licences (WSSLs) and IoAs.</p> <p>A similar condition is already included in the WSSL Standard Conditions.</p> <p>We propose to insert the MAC condition into the IoAs for all appointees.</p>	<p>The proposed text is acceptable.</p> <p>However at the workshop on 20 May Ofwat acknowledged that the condition has been designed to be 'reined back' and we would encourage regular review to assess whether the condition is proportionate given the governance arrangements in the MAC itself.</p>
Stapling condition	<p>This will require appointed companies which do both wholesale and non-household retail activities (integrated appointees) to apply the provisions of the WRC, which governs the behaviour and interactions of wholesalers and retailers in the market.</p>	<p>The proposed text is acceptable.</p>
CPCoP	<p>This will require appointees to comply with the recently published CPCoP.</p> <p>A similar condition is already included in the WSSL Standard Conditions.</p>	<p>The proposed text is acceptable.</p>

PROPOSED AMENDMENTS TO EXISTING CONDITIONS

	Ofwat proposal	South West Water Comment
Terminology	<p>Some changes to Condition A and Condition R will be required to reflect the legislative changes, and to update the definitions to reflect the other changes proposed in this consultation.</p>	<p>The proposed text is acceptable.</p>
Condition S	<p>To modify Condition S as the CTP will be replaced by the new market arrangements set out in the MAC and WRC for the retail market.</p> <p>We propose to retain the relevant parts of the CTP in relation to introductions of water under new water supply licences with (English) wholesale or (Welsh) supplementary</p>	<p>We agree with the proposal to review conditions R 1-4 and S, and consult on merging them within a revised condition S.</p>

	<p>authorisations.</p> <p>We also propose to retain the access code provisions in paragraphs 1-4 of Condition R in relation to such introductions of water by moving them into Condition S.</p> <p>We will explain those proposals in more detail as part of our separate consultation on introductions of water under the new water supply licensing scheme, which we plan to publish shortly.</p>	
Condition R 1-4	<p>To remove appointees' obligations to have an access code in relation to the retail market, as the retail market element of access codes will be replaced by the new market arrangements set out in the MAC and WRC.</p> <p>We propose to retain the relevant aspects of the access code provisions in relation to introductions of water under new water supply licences with (English) wholesale or (Welsh) supplementary authorisations.</p> <p>We intend to do so by moving the relevant obligations that are currently set out in paragraphs 1-4 of Condition R into a modified Condition S.</p> <p>We will explain those proposals in more detail as part of our separate consultation on introductions of water under the new water supply licensing scheme, which we plan to publish shortly.</p>	As previously, we agree with the proposal to review conditions R 1-4 and S, and consult on merging them within a revised condition S.
Condition F6	<p>To create a new obligation for a separate certificate of adequacy for the (eligible) retail business of the appointee.</p> <p>This will be carved out of the existing obligation to have a certificate of adequacy for the whole appointed business.</p> <p>To be proportionate, this change will not apply to appointees with small numbers of eligible customers i.e. new appointees, appointees wholly or mainly in Wales, and Cholderton and District Water.</p>	We note that the proposal for the separate certificate of adequacy within condition F6A.2A is infeasible for SWW as the condition no longer exists, having been replaced by condition P in our new licence.
Condition Q	As the obligation to make drought	The proposed text is acceptable.

	<p>payments relates to the appointee's role as a wholesaler, we propose to extend the obligation to make the payments to all affected business customers, regardless of whether they are customers of the appointee's own retail business or customers of a WSSL retailer.</p> <p>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</p>	<p>We support the intention to consider how safeguards for wholesalers may be implemented and would be pleased to participate in any discussions.</p>
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