



Retail Market Opening Programme
Ofwat
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Strategy & Regulation

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Dear Sir or Madam

Proposals to modify Instruments of appointment under section 55 – a consultation

Thank you for the opportunity to comment on the intended modifications.

We agree with the creation of the MAC condition, the Stapling condition, and the proposed amendments to Terminology, Condition S, Condition R 1-4, Condition F6 and Condition Q. We have, however, one comment on the new Customer Protection Code of Practice ("CPCoP") condition.

In line with existing licence conditions (such as condition F), the proposed CPCoP condition incorporates supporting documents by reference. The approach Ofwat has adopted elsewhere in the licence where supporting documents are involved is that the change control and appeal processes relating to the supporting documents are stated explicitly in the licence condition. This ensures that proper checks and balances are maintained.

Indeed, in the August 2016 workshops on the licence modifications for Water 2020, Ofwat proposed the following licence wording to cover the change control process for supplementary documents:

"The Water Services Regulation Authority may, from time to time, make such revisions to any supporting document as it deems reasonable and appropriate for the purposes of the Condition, provided that, prior to any revision taking effect:

- (a) it consults the Appointee on the revision proposed; and*
- (b) it gives reasonable notice to the Appointee of the revision to be made following such consultation".¹*

¹ "Note for 9 August licence discussion", Ofwat, 6 August 2016.

In that case, Ofwat's proposed licence wording also sets out an appropriate appeals process.

We recognise that the current wording of the CPCoP includes a change protocol, but there does not seem to be any requirement for future iterations of the CPCoP to continue to do so. It would be more consistent with Ofwat's approach elsewhere if the change protocol were included in the licence condition, perhaps by adopting the wording above. Whilst, for the avoidance of doubt, we are not rejecting the current draft wording of the CPCoP condition, we would support the revision proposed above, if Ofwat were minded to include it.

Finally, we note that a planned DEFRA consultation in summer 2016 will address the issue of changes to and appeals against changes to the Wholesale-Retail Code, the Market Arrangements Code and the Wholesale Contract for Wholesale Services. We would support extending this consultation to cover appeals against the CPCoP.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Colm Gibson', is positioned above the printed name.

Colm Gibson
Head of Economic Regulation