

15 July 2016

Trust in water

Appendix: Retail Market Opening – proposed changes to all instruments of appointment

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Please note: in this Appendix, **previous proposals for amended conditions are shown in green**, and the **further proposed changes are shown in red**, for comment.

The proposed changes are marked on a generic loA for the purposes of this consultation, although we have indicated where our proposals would affect particular appointees (e.g. new appointees, or those wholly or mainly in England). As there are some differences between the loAs, appointees need to consider the proposed changes against their own loA.

1. Draft proposed text for new conditions, with changes marked in red against the previous draft

MAC condition

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 **the** 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.

Stapling condition

Note: the definitions of ‘wholesale business’ and ‘retail business’ in this draft condition are based on the definitions in Condition B. As not all appointees have these provisions of Condition B in their IoAs, we propose to include the definitions in the Stapling condition.

Application of Wholesale Retail Code

Interpretation

In this Condition:

“**Eligible Premises**” shall have the meaning given in the Wholesale-Retail Code

“**Wholesale Business**” means the business undertaken as part of the Appointed Business excluding the Retail Business

“**Retail Business**” means those activities that constitute the provision of goods or services by the Appointee directly to one or more customers, and such activities ancillary to such provision including ownership of meters, and that are so designated from time to time (which designation, for the avoidance of doubt, shall be reversible) by the Water Services Regulation Authority or by such person or persons as may be nominated by the Water Services Regulation Authority to do so, but for the avoidance of doubt shall not include the following:

- (a) water resources, raw water distribution, water treatment, treated water distribution, sewage collection, sewage treatment, sludge treatment or sludge disposal (as each of those is defined in the Water Services Regulation Authority’s Regulatory Accounting Guideline 4.04); or
- (b) in so far as the ownership of meters is so designated, the ownership of meters that were installed at, or in order to measure supplies to customers’ premises on or before the date of such designation

“**NHH Retail Business**” means those aspects of the Appointee’s Retail Business in respect of non-household customers, which would, if carried on by a Licensee, fall within the scope of a retail authorisation as set out in Schedules 2A or 2B WIA91, or restricted retail authorisation as set out in Schedule 2A WIA91

~~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 NHH Retail Business

If the Appointee carries out activities in respect of its NHH Retail Activities Business 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 NHH Retail Business as if:
 - (a) the Appointee’s Wholesale Business and its NHH Retail Business were, in fact, ~~held in~~ carried out by separate legal entities, and the NHH Retail Business held a water supply licence and/or sewerage licence; and
 - (b) ~~the Appointee had entered into there is were~~ 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) ~~between the Appointee’s Wholesale Business and its NHH Retail Business.~~
2. put in place written arrangements in relation to any such activities between its Wholesale Business and its NHH Retail Business which are as far as is reasonably practicable 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. as far as is reasonably practicable, and in order to ensure that it does not show any undue preference towards its NHH Retail Business or any undue discrimination against any Licensee in its Area of Appointment, 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.

For appointees whose supply systems are wholly or mainly in England:

This condition [X] of the Appointment shall cease to have effect on the Exit Date. “Exit Date” shall have the same meaning as in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

Customer protection condition

(1) When dealing with customers in Eligible Premises, the Appointee must comply with the Customer Protection Code of Practice in respect of those customers.

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

For appointees whose supply systems are wholly or mainly in England:

This condition [X] of the Appointment shall cease to have effect on the Exit Date. “Exit Date” shall have the same meaning as in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

2. Draft proposed text for amended conditions, with previously proposed changes marked in green and further proposed changes marked in red against the existing conditions

Condition A – interpretation and construction

Unless the contrary intention appears:

- (1) words and expressions used in these Conditions and references in these Conditions to enactments shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them;
- (2) references in these Conditions to enactments shall include any statutory modification thereof after the transfer date;
- (3) words and expressions used in these Conditions shall have the same meaning as in any provision of the Water Industry Act 1991;
- (4) references in these Conditions to sections and Schedules are references to sections of, and Schedules to, the Water Act 1989; and
- (5) references in these Conditions to paragraphs are references to paragraphs of the Condition in which the reference appears and references to sub-paragraphs are references to sub-paragraphs of the paragraph in which the reference appears.

1 In construing these Conditions:

- (1) the heading or title of any Condition or of any paragraph of any Condition shall be disregarded; and
- (2) any description of the purposes of a Condition shall be construed subject to the provisions of the rest of the Condition in which that description appears.

2 Unless the context otherwise requires, in these Conditions:

"**the 1937 Act**" means the Public Health (Drainage of Trade Premises) Act 1937;

"**the 1945 Act**" means the Water Act 1945;

"**the 1973 Act**" means the Water Act 1973;

"**the 1985 Act**" means the Companies Act 1985;

"**the 2014 Act**" means the Water Act 2014;

"**the Appointed Business**" means the business consisting of the carrying out by the Appointee of the Regulated Activities;

"**the Area**" means the area for which for the time being the Appointee holds the appointment as water undertaker or, as the case may be, sewerage undertaker;

"**Associated Company**" means any Group Company or Related Company;

"**the Auditors**" means the Appointee's auditors for the time being appointed in accordance with the Companies Act 2006;

"**books and records**" means any and all books, records, files, maps, plans, documents, papers, accounts, estimates, returns and other data of whatsoever nature and whether or not created, recorded or maintained in a document;

"**Charging Year**" means a year commencing on 1 April;

"**the Customer Service Committee**" shall be read as a reference to the Consumer Council for Water;

"**domestic customer**" means the occupier of domestic premises;

"**domestic premises**" means any premises used wholly or partly as a dwelling or intended for such use;

“Eligible Premises” shall have the meaning given in the Wholesale-Retail Code;

"financial year" means a financial year of the Appointee beginning and ending on the respective dates referred to in section 390 of the Companies Act 2006;

"Group Company" means any subsidiary or holding company of the Appointee and any subsidiary of any holding company of the Appointee (other than the Appointee);

"Information" means information which is in the possession of the person required to furnish it or which it can reasonably obtain or which it can reasonably prepare from information which is in its possession or which it can reasonably obtain, and information which is required to be furnished under any of these Conditions shall be furnished, subject to the provisions of the Condition under which that information is required to be furnished, in such form and manner as the Water Services Regulation Authority may reasonably require;

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

"Periodic Review" means a review conducted by the Water Services Regulation Authority for the purpose of determining one or more Price Controls in accordance with Part III of Condition B, but so that references in Part IV of Condition B to a Periodic Review shall exclude any review carried out under paragraph 11 of that Condition and shall include the determination by the Competition Commission [now replaced by the Competition and Markets Authority] of the relevant questions or, as the case may be, the disputed determination referred to it under paragraph 16 of Condition B;

"Prior Year" means the year commencing 1 April immediately prior to the relevant Charging Year;

"Reference Notice" means a notice given to the Water Services Regulation Authority under paragraph 11 or 14 of Condition B;

"the Regulated Activities" means the functions of a water undertaker or, as the case may be, a sewerage undertaker and, for the avoidance of doubt, references to the functions of a water undertaker or, as the case may be, a sewerage undertaker shall include references to the duties imposed on a water undertaker or, as the case may be, a sewerage undertaker;

"Related Company" means any company in relation to which the Appointee or any Group Company has a participating interest within the meaning of paragraph 11 of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 or which has such a participating interest in relation to the Appointee or any Group Company;

"Relevant Premises" means any office premises occupied by the Appointee in relation to the Appointed Business and to which members of the public have access;

"Retail Market Opening Date" means the date determined by the Authority as the date when the retail water and sewerage market for Eligible Premises opens;

"the Retail Prices Index" means the Retail Prices Index published by the Statistics Board each month in respect of all items or, if the said index for the month of November is not published by 31 December next following, such index for such month as the Water Services Regulation Authority may not later than 7 January next following determine to be appropriate in the circumstances, after such consultation with the Appointee as is reasonably practicable, and in such a case references to the Retail Prices Index shall be construed for the purpose of all subsequent calculations for which the value of the Retail Prices Index for that year is relevant as references to that other index;

"Review Charging Year" means the first of the Charging Years in respect of which any Periodic Review is carried out;

"the Review Notice Date" means the first day of January which is fifteen months before the first day of the Review Charging Year;

"Sewerage Infrastructure Charge" means such a charge as is described in section 146(2)(b) of the Water Industry Act 1991;

"trade effluent" has the same meaning as in section 141 of the Water Industry Act 1991;

"the transfer date" means 1 September 1989;

"the Water Authority" means the Water Authority of which the Appointee is the successor company;

"Water Infrastructure Charge" means such a charge as is described in section 146(2)(a) of the Water Industry Act 1991.

- 3 In the definition of "Excluded Charges" and "Standard Charges" in Condition B and in Condition E, references to the Water Authority shall include references to the Water Authority's predecessors in title.
- 4 Any notification required or permitted to be given under any Condition shall be given in writing and cognate expressions shall be construed accordingly.
- 5 Where one only of the Appointments is terminated, so much of the provisions of these Conditions as applies or is relevant exclusively to the Appointment which has been so terminated or to the activities of an undertaker holding an appointment of the kind which has been so terminated shall cease to have effect as from the date on which the termination of that Appointment takes effect.
- 6 The Appointee may refer to the Water Services Regulation Authority for determination by it (having considered any representations by the Appointee and any other water undertaker or, as the case may be, sewerage undertaker) any question arising as to whether any area, island, premises or installation is, or, as the case may be, are, comprised within the Water Supply Area or, as

the case may be, the Sewerage Services Area, as those expressions are defined in Schedule 1 to this instrument.

“Wholesale-Retail Code” means the code issued by the Water Services Regulation Authority pursuant to sections 66DA and 117F of the Water Industry Act 1991.

Condition S – Customer Transfer Protocol

[Previously proposed text no longer required and will be removed: This Condition is deleted for the purposes of the new retail market and will not be applicable for those purposes with effect from Retail Market Opening Date 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.]

Responses to our earlier consultations agreed that these provisions will not be required for the retail market. But we propose to retain the relevant provisions of Condition S and the access code provisions set out in paragraphs 1-4 of Condition R in relation to introductions of water. We propose to pull them together in a modified Condition S, as it seems sensible to have all the transitional provisions for the introduction of water in one place. We plan to consult on our proposals within the new few weeks, before making the final modifications in this area. In the meantime, we have marked the text in Condition S and Condition R 1- 4 as deleted, and it will be replaced by the new condition S.

~~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

[Previously proposed text no longer required and will be removed:]

Interpretation

In this condition:

“Competitive Market” means the provision of retail water and sewerage services to Eligible Premises]

The Access Code

[Previously proposed text no longer required and will be removed: Paragraphs 1- 4 of this Condition are deleted for the purposes of the Competitive Market and will not be applicable for those purposes with effect from Retail Market Opening Date 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 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~~ Licensee it shall ensure that every transaction between the Appointed Business and that ~~licensed water supplier~~ Licensee is at arm's length.
- (2) For the purpose of this paragraph the Appointee is related to a ~~licensed water supplier~~ Licensee 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~~ Licensee.
- (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 ~~ensure that its Appointed Business does~~ not show undue preference towards, or undue discrimination against -
- (a) customers or potential customers (or classes of customers) of a ~~licensed water supplier~~ Licensee, 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~~ Licensee; or
 - (b) a ~~licensed water supplier~~ Licensee, as compared with any other ~~licensed water supplier~~ Licensee or the Appointee itself.

Obligations about information

- 7 (1) Whenever the Appointee is -
- (a) negotiating with a ~~licensed water supplier~~ Licensee the period for which and terms and conditions on which it might discharge any of its duties under sections 66A to 66C, ~~117A and 117B~~; 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~~ Licensee in the course or contemplation of the discharge of its duties under sections 66A to 66C, and 117A to 117B or in the course or contemplation of its dealings with or in relation to that ~~licensed water supplier~~ Licensee under sections 66A to 66C, and 117A to 117B except

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(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~~ Licensee.

(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~~ Licensee in the course or contemplation of the discharge of its duties under sections 66A to 66C and 117A to 117B or in the course or contemplation of its dealings with or in relation to that ~~licensed water supplier~~ Licensee under sections 66A to 66C and 117A to 117B 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 [Note: we propose to retain this reference to Condition S because we propose to insert a new Condition S relating to the introductions of water, as explained above. If we decide not to do that following consultation, we would remove this reference to 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.

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 - (1) The Appointee shall provide to a ~~licensed water supplier~~Licensee such information as the ~~licensed water supplier~~Licensee reasonably requires -
 - (a) to enable the ~~licensed water supplier~~Licensee to apply for, negotiate and conclude an agreement under section 66D or section 117E;
 - (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~~Licensee 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~~Licensee 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~~Licensee 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~~ Licensee 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~~ Licensee 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~~ Licensee 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~~ Licensee 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~~ Licensee; or
 - (b) from a person supplied or seeking to be supplied by a ~~licensed water supplier~~ Licensee;more information than the Appointee reasonably requires -

- (i) for the purposes of carrying out its functions;
- (ii) to ascertain whether the ~~licensed water supplier~~ Licensee 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.

New appointees only:

Application

10

- (1) This Condition shall not apply to the Appointee in the circumstances and to the extent set out in this paragraph.
- (2) Paragraphs 1 to 9 of this Condition shall not apply if and for so long as the Appointee has no supply system, as defined in section 17B(5) **or no sewerage system as defined in section 17BA(7)**.
- (3) Subject to sub-paragraph (4), the Appointee shall notify the Authority as soon as it has a supply system, as defined in section 17B(5) **or a sewerage system as defined in section 17BA(7)** .
- (4) If the Appointee has a supply system, as defined in section 17B(5) **or a sewerage system as defined in section 17BA(7)**, on the Effective Date, it shall be deemed to have notified the Authority that it has a supply system at that date.
- (5) If and for such time as the Appointee has a supply system, as defined in section 17B(5) **or a sewerage system as defined in section 17BA(7)** -

- (a) the Appointee shall notify the Authority immediately of the fact and terms of each request the Appointee receives from a ~~licensed water supplier~~ Licensee to provide a supply of water or to permit the introduction of water into the Appointee's supply system pursuant to section 66A, 66B or 66C; or pursuant to 117A to 117B to permit the use of the Appointee's sewerage system; and
- (b) paragraphs 1 to 9 of this Condition shall apply only from and for such time and to such extent as may be specified by the Authority from time to time by relevant notice.
- (6) Under sub-paragraph (5)(a) -
- (a) a relevant notice shall not have effect unless, before making the relevant notice, the Authority has consulted the Appointee and 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.

Condition F 6A.2A – certificate of adequacy

Interpretation

In this [sub-paragraph]:

“Wholesale Business” means the business undertaken as part of the Appointed Business excluding the Retail Business

“Retail Business” means those activities that constitute the provision of goods or services by the Appointee directly to one or more End-Users, and such activities ancillary to such provision including ownership of meters, and that are so designated from time to time (which designation, for the avoidance of doubt, shall be reversible) by the Water Services Regulation Authority or by such person or persons as may be nominated by the Water Services Regulation Authority to do so, but for the avoidance of doubt shall not include the following:

- (a) water resources, raw water distribution, water treatment, treated water distribution, sewage collection, sewage treatment, sludge treatment or sludge disposal (as each of those is defined in the Water Services Regulation Authority's Regulatory Accounting Guideline 4.04); or

(b) in so far as the ownership of meters is so designated, the ownership of meters that were installed at, or in order to measure supplies to, End-Users' premises on or before the date of such designation

“NHH Retail Business” means those aspects of the Appointee's Retail Business in respect of non-household customers, which would, if carried on by a Licensee, fall within the scope of a retail authorisation as set out in Schedules 2A or 2B WIA91 or restricted retail authorisation as set out in Schedule 2A WIA91

“Residual Business” means the Retail Business excluding the NHH Retail Business together with the Wholesale Business

“End-User” means a person who, otherwise than as a person holding an appointment or a licence under the Water Industry Act 1991 or under other legislation in respect of the supply of water or sewerage services enacted from time to time, is a customer of the Appointee or a user of the goods or services concerned.

Requirement for certificates of adequacy

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 NHH Retail Business and its Residual ~~Wholesale~~ Business** in the following terms:

"(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".

For appointees whose supply systems are wholly or mainly in England only:

The provisions in sub-paragraph [6A.2A] in this condition F requiring separate certificates of adequacy for each of the Appointee's Wholesale and Retail Businesses shall cease to have effect on the Exit Date.

"Exit Date" shall have the same meaning as in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

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.