

Consultation on Wholesale and Supplementary Authorisations, and Condition S

About this document

In this consultation document we explain the changes the [Water Act 2014](#) requires to be made to the wholesale water elements of the Water Supply Licensing (WSL) regime. We set out the proposed standard licence conditions specific to the English wholesale authorisation and the Welsh supplementary authorisation of new water supply licences, which will succeed the wholesale elements of the current combined water supply licences (CSLs), and the proposed application process.

As we stated in [IN 16/04 Replacing combined water supply licences in England and Wales](#), once in place, we expect the wholesale authorisation to evolve over time as the provisions of the Water Act 2014 for the wholesale water market are implemented. So, for example, the English threshold requirement for non-household premises of 5Ml/year will be removed in the future. The timing of implementation of the Water Act will be a decision for the Secretary of State in England. We use the term 'wholesale authorisation' in England to indicate that the water supply licensing framework is changing and therefore is distinct from the 'supplementary authorisation' in Wales where the Welsh Government has decided to retain the scope of the existing water supply licensing framework. In line with the Water Act 2014, the supplementary authorisation in Wales will be introduced to replace the wholesale elements of the CSL. Unlike the wholesale authorisation, the supplementary authorisation will not be expected to evolve further after its introduction.

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Responding to this consultation

We invite stakeholders to comment on our proposals for additional standard licence conditions for new water supply licences and a new Condition S for water companies by 8 September.

Please email your responses to nathan.warren@ofwat.gsi.gov.uk or post them to:

Consultation on Wholesale and Supplementary Authorisations, and Condition S
Ofwat
Centre City Tower
7 Hill Street
Birmingham
B5 4UA

If you wish to discuss any aspect of this document, please direct your enquiry to Nathan Warren on 0121 644 7810 or by email to nathan.warren@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to this document on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished.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.

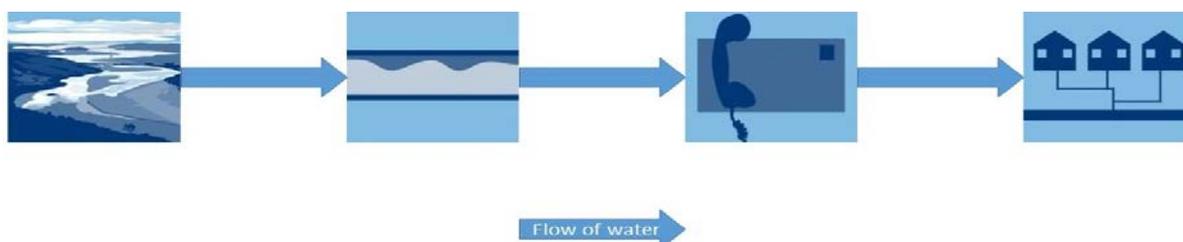
If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory ‘Code of Practice’ which deals, among other things, with obligations of confidence.

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.

1. Introduction

The Water Act 2014 requires the current WSL regime to change to support an expanded scope of markets and customer choice for non-household customers served by companies. The UK Government is implementing this change whilst the Welsh Government is retaining the key elements of the existing regulatory framework.

As a consequence of the new legislation, the existing WSL regime in England and Wales needs to be succeeded by the new Water Supply and Sewerage Licensing (WSSL) regime across both jurisdictions. This consultation is on the replacement of one particular part of the existing WSL regime: the wholesale elements of combined water supply licences (CSLs).



A CSL enables the WSL holder to put water into an incumbent's network for the purpose of supplying water to the WSL holder's own retail customers. Unless the CSL is replaced with an equivalent authorisation under the new WSSL regime, the possibility for wholesale market entry of this form would cease when the current WSL regime ends. This consultation therefore seeks to maintain, rather than extend, the existing possibilities for wholesale market entry. This will happen through the introduction of the wholesale authorisation and supplementary authorisation for new water supply licences that will replicate the existing wholesale elements of the CSL until further evolution of the market architecture.

These reforms apply differently in England and Wales. We use 'England' in this document to refer to regions that are served by water and/or sewerage companies whose areas are wholly or mainly in England, and 'Wales' to refer to regions that are served by water and/or sewerage companies whose areas are wholly or mainly in Wales. These are the current jurisdictions of the UK and Welsh governments respectively in relation to the water industry. The [Silk Review](#) recommended that the devolution boundaries be realigned to exactly match the national boundaries. This could be taken forward through the Wales Bill currently before Parliament. The implementation of those changes might have consequential impacts on the new WSSL regime.

Through the Open Water programme we have already [consulted on the conditions](#) applicable to the WSSLs for the customer-facing 'retail' services. We have developed and consulted on the arrangements for the English retail authorisations, and Welsh restricted retail authorisations of the new water supply licences that will replace the existing retail WSLs and the retail elements of CSLs. The consultation also covered the standard licence conditions that all holders of new water supply and sewerage licences will be required to follow as well as the application process to obtain licences with a retail and/or restricted retail authorisation and be able to provide services in competition with incumbent water companies. The application process for the new WSSLs with retail and restricted retail authorisations opened on 5 April 2016 and the WSSLs are expected to become active on 3 April 2017.

As well as the customer-facing retail activities, the Water Act 2014 also provides for third party entry to provide wholesale services, for example, introducing water into a water company's network or disposing of sewage/sludge taken from a sewerage company's network. We will facilitate these changes in line with our statutory duties and within the context of the policy frameworks set by the Welsh and UK governments. This consultation relates to the introduction of wholesale and supplementary authorisations for new water supply licences.

Because wholesale market opening will not occur until after 2019, appropriate changes to the standard conditions specific to the wholesale authorisations for new water supply licences will need to be made at that stage.

The Welsh Government is not intending to extend the scope of competition in Wales. Instead, it will use regulation to protect customers. The supplementary authorisation for Wales is therefore intended to be an equivalent replacement for the wholesale elements of the CSL. The restrictions associated with the supplementary authorisation will remain in place unless the Welsh Government later decides to extend the scope of competition.

We expect that the wholesale and disposal authorisations for new sewerage licences will be introduced in England after 2019, and are working with the UK Government and other stakeholders to facilitate this. The Welsh Government is not currently intending to introduce sewerage licences in Wales and therefore the current framework will continue unless the Welsh Government decides to extend the scope of competition.

Appendix 3 sets out an illustrative example of the proposed text of an appointment Condition to retain the existing obligations on water companies in relation to the introduction of water by holders of new water supply licences with wholesale or

supplementary authorisations. We intend to bring these obligations together in one Condition (Condition S) in the interests of clarity and simplicity.

We are proposing to modify the current Condition S (customer transfer protocol) of water companies' appointments to bring together the existing obligations of water companies in relation to the customer transfer protocol and access code (contained in Condition R) that we intend to retain. We consider that it would be better for Condition S to cover all the wholesale water resource supply activities, as it seems sensible for all the relevant provisions to be brought together in one licence condition, for ease of drafting and clarity. It will also make it easier to make the future changes we know we will need to make as wholesale markets are introduced and the transitional restrictions on the wholesale authorisations of new water supply licences are removed.

We are proposing to make the necessary licence modifications to the conditions of water companies'¹ appointments under section 55(1) of the Water Act 2014. This allows Ofwat to modify the conditions of water (or sewerage²) companies' appointments "where it considers it necessary or expedient to do so in consequence of provision made by or under" Part 1 of the Water Act 2014. This is therefore a consultation, in accordance with section 55(4) of the Water Act 2014, on a consequential licence modification.

We consider the proposed licence modifications to be necessary or expedient in consequence of provision made by the Water Act 2014 to, in particular, introduce new water supply licences with wholesale and supplementary authorisations.

¹ In this document, a reference to a water company (or companies) means a company (or companies) holding an appointment as a water undertaker under the Water Industry Act 1991.

² In this document, any reference to a sewerage company (or companies) means a company (or companies) holding an appointment as a sewerage undertaker under the Water Industry Act 1991

2. Replacing combined water supply licences in Wales

Replacing combined water supply licences in Wales will require the introduction of the successor to the wholesale parts of the existing CSLs. The supplementary authorisation of CSLs currently allows CSL holders to provide their own water resources using water companies' networks to supply their own retail customers. There are currently five companies that hold these licences but to date the regime has not resulted in a CSL holder's water being put into a water company's network. The supplementary authorisation of CSLs will be succeeded, as part of the changes made by the Water Act 2014, by the supplementary authorisation of new water supply licences to introduce water into water networks operated by water companies whose area is wholly or mainly in Wales³.

The Welsh Government has decided to retain the scope of the existing water supply licensing framework. The Water Act 2014 therefore introduces the supplementary authorisation for new water supply licences to replace the wholesale elements of the CSL. Unlike the wholesale authorisation, the supplementary authorisation will not be expected to evolve further after its introduction. However, the Water Act 2014 does give the Welsh Government the power to extend the wholesale authorisation to the supply systems of water companies whose areas are wholly or mainly in Wales in the future if it considers it appropriate to do so.

Following discussion with the Welsh government, and other regulators, we have confirmed that the current CSL arrangements will continue to remain in place until 3 April 2017, but from 3 April 2017 CSLs will be succeeded by new water supply licences with restricted retail authorisations and supplementary authorisations in Wales. CSL holders will have to reapply for a new water supply licence and the associated authorisations they want to have.

These new arrangements will be implemented to preserve, but not extend, the existing opportunities for wholesale market entry in Wales relative to the current CSL arrangements. So, the ability for a new water supply licensee with a (Welsh)

³ Please note that the Commission on Devolution in Wales (the Silk Commission) has recommended that the boundaries of devolution for water and sewerage services should be redrawn along national rather than company boundaries, which might have implications for WSSL licences.

supplementary authorisation to provide water resources using the water network of an appointee will still require:

- the business⁴ premises being supplied to meet the relevant threshold requirement (the Welsh threshold is at least 50Ml/year);
- access pricing using the costs principle;
- licensees to only supply their own business customers;
- provision of water resources into the network of the water company (there will be no regulated access for a water supply licensee to treatment or storage facilities); and
- compliance with the relevant licence conditions and arrangements in relation to water quality.

The CSLs will continue to exist until 3 April 2017. We will put in place arrangements that will allow existing holders of a CSL to apply for a new water supply licence with a supplementary authorisation before their CSL ends. Those who do not hold a CSL will also be able to apply for a new water supply licence with a supplementary authorisation. It will be possible to make applications from November 2016, following this consultation about the proposed standard licence conditions and application process.

The proposed standard licence conditions specific to new water supply licences with supplementary authorisations are set out in Appendix 2. These are based on paragraphs 6 (Customer transfer protocol), 12 (Revocation – combined licences), 13 (Prohibition of introduction – combined licences) and 14 (Special administration – combined licences) of [the standard conditions that apply to existing CSLs](#). In summary the main changes from the existing standard conditions for CSLs are:

- explicit recognition of the roles of the Welsh Ministers and the Chief Inspector of Drinking Water for Wales;
- improved clarity in relation to the revocation provisions (condition 2 of Part D); and
- changes to the prohibition on introduction provisions (condition 3 of Part D) to reflect changes to legislation.

Please note that the Secretary of State has already determined and published [standard conditions applicable to the holders of all new water supply licences](#)

⁴ In this document a reference to business means business, public sector or charity

(including those with supplementary authorisations). This is the Part A to which the proposed conditions in appendices 1 and 2 refer.

3. Replacing combined water supply licences in England

In relation to England, the CSLs will be succeeded as part of the changes made by the Water Act 2014 by the wholesale authorisation for new water supply licences.

Following discussion with the UK government, and other regulators, we have already confirmed that the current CSL arrangements will continue to remain in place until 3 April 2017, but from 3 April 2017 CSLs will be succeeded by new water supply licences with retail authorisations and wholesale authorisations in England. CSL holders will have to reapply for a new water supply licence and the associated authorisations they want to have.

These new arrangements will be implemented to preserve, for the time being, the existing opportunities for wholesale market entry in England relative to the current CSL arrangements. So, the ability to input water into the water network by a new water supply licensee with a wholesale authorisation will still require:

- the business premises being supplied to meet the relevant threshold requirement (the English threshold is at least 5MI/year);
- access pricing using the costs principle;
- licensees to only supply their own business customers;
- provision of water resources into the network of the water company (there will be no regulated access for a water supply licensee to treatment or storage facilities); and
- compliance with the relevant licence conditions and arrangements in relation to water quality.

The CSLs will continue to exist until 3 April 2017. We will put in place arrangements that will allow existing holders of a CSL to apply for a new water supply licence with a wholesale authorisation before their CSL ends. Those who do not hold a CSL will also be able to apply for a new water supply licence with a wholesale authorisation. It will be possible to make applications from November 2016, following this consultation about the proposed licence conditions and application process.

Once in place, we expect the wholesale authorisation to evolve over time as the market architecture for the wholesale water market develops. So, for example, the threshold requirement will be removed in the future. The timing of these future evolutionary changes will be a decision for the Secretary of State, but these changes are unlikely before 2019. These future changes required to implement the Water Act 2014 will be made alongside the development of the other necessary parts of the

wholesale market architecture, such as changes to water companies' instruments of appointment and access codes.

The proposed standard licence conditions specific to new water supply licences with wholesale authorisations are set out in Appendix 1. These are based on paragraphs 6 (Customer transfer protocol), 12 (Revocation – combined licences), 13 (Prohibition of introduction – combined licences) and 14 (Special administration – combined licences) of [the standard conditions that apply to existing CSLs](#). In summary the main changes from the existing standard conditions for CSLs are:

- improved clarity in relation to the revocation provisions (Condition D2); and
- changes to the prohibition on introduction provisions (Condition D3) to reflect changes to legislation.

Please note that the Secretary of State has already determined and published [standard conditions applicable to the holders of all new water supply licences](#) (including those with wholesale authorisations). This is the Part A to which the proposed conditions in appendices 1 and 2 refer.

4. Application process for wholesale and supplementary authorisations

We propose that the application process for a new water supply licence with a wholesale or supplementary authorisation will be broadly the same as that for WSSLs but adapted for the wholesale market. Details of this can be found in chapters 2 and 3 of [Application process for water and sewerage licences – retail market opening for non-household customers: guidance](#).

The table below shows a high-level overview of the application process for WSSLs.

Requirements of applicant		
1	Understanding the market	Applicants should be aware of the new market arrangements and the key decisions which have been taken by reviewing relevant background materials
2	Geography	Applicants should identify which geographies they wish to operate in
3	Making an application	Applicants should apply providing the information required in the application form following the guidance set out in this document
4	Payment of fee	At the same time, applicants should pay the relevant fee
Our application assessment		
5	Initial screening	We will check applications for completeness
6	Our assessment	We will assess the applications for England & Wales against our criteria which will include consultation with other regulators (DWI or EA/NRW as appropriate)
7	Minded to grant	We will issue a minded to grant decision should the information provided pass our assessment criteria
8	Granting a wholesale authorisation	We will grant licences upon the applicant successfully passing the requirements and assessment stages
9	Issues	If we identify shortcomings, we will inform applicants of reasons why we may reject or suspend an application. We also provide information on the dispute process

We will update the WSSL application process guidance in October 2016 and, included in this update, will be the application process for wholesale and supplementary authorisations.

5. Consultation on modifications to the conditions of water companies' appointments

Condition R (Provision of combined and wholesale supplies) and Condition S (Customer transfer protocol) of the existing conditions of the appointments of water companies currently include obligations for water companies to (among other things):

- have an Access Code setting out the timetable and terms and conditions on which holders of current water supply licences can use their supply networks; and
- comply with the Customer Transfer Protocol (an equivalent obligation to that proposed in the standard conditions for new water supply licences with wholesale or supplementary authorisations).

In relation to the retail market, these requirements will be replaced by the new market arrangements. These obligations will still be needed in relation to the wholesale water market (at least until the wholesale market reforms in the Water Act 2014 are implemented).

We propose to bring together the existing obligations in Condition S, as it seems sensible for all the relevant provisions in relation to introductions of water to be brought together in one licence condition, for ease of drafting, clarity, and to make it easier to make the future changes that we know we will need to make when full upstream competition is introduced and the transitional restrictions on the wholesale authorisations of new water supply licences are removed.

Appendix 3 sets out an illustrative example of the proposed text of an appointment condition to retain these existing obligations on water companies in relation to the introduction of water by holders of new water supply licences with wholesale or supplementary authorisations. For ease of comparison, Appendix 4 shows the changes from the equivalent existing conditions (paragraphs 1 to 4 of Condition R (Provision of combined and wholesale water supplies) and Condition S (Customer transfer protocol)).

We are proposing to make the necessary licence modifications under section 55(1) of the Water Act 2014, which allows Ofwat to modify the conditions of appointment of a company appointed under Chapter 1 of Part 2 of the Water Industry Act 1991 to be a water (or sewerage) undertaker “where it considers it necessary or expedient to do so in consequence of provision made by or under” Part 1 of the Water Act 2014. This

is therefore a consultation, in accordance with section 55(4) of the Water Act 2014, on a consequential licence modification.

We consider the proposed licence modification to be necessary or expedient in consequence of provision made by the Water Act 2014 to, in particular, introduce new water supply licences with wholesale and supplementary authorisations.

We welcome comments on our proposed licence modification, including the wording of the illustrative example.

6. Next steps

The consultation will close on 8 September 2016 and we expect applications for new water supply licences with wholesale and supplementary authorisations to open on 1 November 2016.

Existing holders of new water supply licences will be able to apply for a variation of their licence so that it gives the wholesale and/or supplementary authorisation. Only companies that apply for, or hold, restricted retail authorisations will be granted supplementary authorisations. Similarly, for the time being, only companies that apply for, or hold, water supply retail authorisations will be granted wholesale authorisations.

Defra will, in consultation with the Welsh Government, determine the standard licence conditions applicable to wholesale and supplementary authorisations before the first such licence or variation is granted. We expect that CSLs will cease to have effect from 3 April 2017.

We intend to make the proposed changes to Condition S of water companies' instruments of appointment so that they are in place before 3 April 2017.

6.1 Consultation questions

- 1. Do you have any comments on the proposed standard licence conditions in appendices 1 and 2 for new water supply licences?**
- 2. Do you have any comments on the application process in chapter 4?**
- 3. Do you have any comments on the proposed modifications to Condition S of water companies' appointments in appendix 3?**

Appendix 1: Part C - proposed standard licence conditions applicable to new water supply licences giving a wholesale authorisation

1. Application and interpretation

This Part applies to any water supply licence which gives a wholesale authorisation. The conditions in this Part have effect from the date on which such a licence comes into force or the date on which a water supply licence is varied to give a wholesale authorisation.

For the purposes of this Part:

“English water undertaker” means any water undertaker whose area is wholly or mainly in England and whose supply system the Licensee uses for the purposes of supplying water to the premises of its customers.

“Part A revocation notice” means a notice under condition 10(1) of Part A revoking the water supply licence held by the Licensee;

“qualifying water supply licensee” has the same meaning as in section 23 of the Act (meaning and effect of special administration order); and

“relevant introduction” means an introduction of water by the Licensee in accordance with its wholesale authorisation which is permitted under section 66B of the Act (introduction of water into water undertaker’s supply system) or 66C of the Act (wholesale water supply by secondary water undertaker) and which is designated as a strategic supply under section 66G of the Act (designation of strategic supply) or introductions of water by the Licensee which are so permitted and which are designated as a collective strategic supply under section 66H of the Act (designation of collective strategic supply).

For the purposes of Part A of these conditions, paragraph (1) has effect as if it was a Condition A2 Direction given to the Licensee by the Authority in accordance with condition 2 of Part A.

2. Revocation

- (1) Subject to the following provisions of this condition, a Part A revocation notice shall not be served or take effect while the Licensee is a qualifying water supply licensee.

- (2) Where the Authority is satisfied that arrangements have been made to ensure that activities relating to any relevant introduction will be properly carried on after the Licensee's water supply licence is revoked:
- (b) paragraph (1) ceases to apply; and
 - (c) if a Part A revocation notice has been served on the Licensee and the date specified in that notice has passed, the Licensee's water supply licence shall be revoked immediately.

3. Prohibition on introduction

- (1) The Licensee shall not introduce water from any water source in pursuance of its licence into any English water undertaker's relevant potable supply system until the Chief Inspector of Drinking Water has served notice on the Licensee stating that they have conducted a satisfactory audit in relation to compliance with the relevant regulatory standards and other requirements applicable to the water source and treatment works used by the Licensee in relation to that introduction.
- (2) In paragraph (1)—
- (a) "relevant potable supply system" means any supply system within the meaning of section 17B(4A)(b) of the Act (meaning of supply system) that conveys water which is required to be wholesome at the time of supply by section 68 of the Act (duties with respect to water quality);⁵ and
 - (b) the reference to the treatment works used by the Licensee shall be construed consistently with the reference to a water undertaker's treatment works in section 17B(4A)(a) of the Act.⁶

⁵ See section 86 of the Act.

⁶ See section 68 of the Act (duties with respect to water quality) and the Water Supply (Water Quality) Regulations 2000 S.I. 2000/3184 (as amended by S.I. 2001/2885, S.I. 2002/2469, S.I. 2005/2035, S.I. 2007/2734, S.I. 2010/996, S.I. 2010/991 and S.I. 2016/614) and the Water Supply (Water Quality) Regulations 2001 S.I. 2001/3911 (W. 323) (as amended by S.I. 2005/2035, S.I. 2007/3374 (W.299), S.I. 2010/994 (W.99) and S.I. 2016/410 (W.128)) made under sections 67 (standards of wholesomeness) and 69 (regulations for preserving water quality) of the Act.

4. Special Administration

- (3) Whether or not the Licensee is a qualifying water supply licensee, the Licensee shall at all times ensure that, if a special administration order were made in relation to it, the Licensee would have available to it sufficient rights and assets to enable the special administrator to manage the affairs, business and property of the Licensee so as to ensure that the purposes of such an order could be achieved.
- (4) Where a Licensee is a subsidiary of another company and its ultimate parent company is not a relevant undertaker, the Licensee shall, within 30 days of its Licence coming into force, procure from its ultimate parent company legally enforceable undertakings in favour of the Licensee in a form determined by the Authority and expressed to remain in force for as long as the Licensee holds a water supply licence which gives a wholesale or supplementary authorisation.
- (5) The undertakings referred to in paragraph (2) shall provide that the ultimate parent company shall not, and shall procure that its subsidiaries shall not, cause or contribute to a contravention of this paragraph by the Licensee.

(a) In this condition—

“**subsidiary**” has the same meaning as in section 1159 of the Companies Act 2006 (subsidiary, holding company and wholly-owned subsidiary)

“**ultimate parent company**” shall be construed in accordance with [paragraph 9 of Schedule 4 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410)]; and

“**business**”, “**property**” and “**special administration order**” have the same meanings as in section 23 of the Act (meaning and effect of special administration order).

5. Customer transfer protocol

- (6) (a) For the purposes of this Condition, the “Protocol” means the customer transfer protocol—
- (i) complying with the requirements of sub-paragraphs (c) to (f);
 - (ii) served by the Authority on the Licensee when or after the date on which its licence comes into force; and

(iii) as subsequently amended from time to time in accordance with this Condition.

(b) The Licensee shall comply with the Protocol.

(c) In relation to circumstances where a water supply licensee proposes to introduce water in pursuance of its licence, or the cessation of such an introduction is proposed, the Protocol shall provide a clear, simple and standardised process for the timely and efficient transfer of supplies to premises of customers—

(i) between any water undertaker and any water supply licensee; and

(ii) between any two water supply licensees.

(d) The Protocol shall—

(i) make the same provision for all of the transfers referred to in sub-paragraph (c); and

(ii) include provisions for its amendment which shall—

(1) allow the Authority and such other persons as the Protocol shall specify to propose amendments;

(2) subject to sub-paragraph (3), require the agreement of the Authority and such majorities, as the Protocol shall specify, of water undertakers and of water supply licensees with wholesale or supplementary authorisations, before any amendment can be made; and

(3) 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.

(e) The Protocol shall include provisions to the effect that, where—

(i) any water undertaker or water supply licensee (“the old supplier”) is supplying water to the premises of a customer;

(ii) that customer has failed to pay the old supplier’s charges for that supply;

(iii) those charges have been demanded by notice served on the customer;
and

(iv) 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.

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

Appendix 2: Part D - proposed standard licence conditions applicable to new water supply licences giving a supplementary authorisation

1. Application and interpretation

(7) This Part applies to any water supply licence which gives a supplementary authorisation. The conditions in this Part have effect from the date on which such a licence comes into force or the date on which a water supply licence is varied to give a supplementary authorisation.

(8) For the purposes of this Part:

“Part A revocation notice” means a notice under condition 10(1) of Part A revoking the water supply licence held by the Licensee;

“qualifying water supply licensee” has the meaning as in section 23 of the Act (meaning and effect of special administration order);

“relevant introduction” means an introduction of water by the Licensee in accordance with its supplementary authorisation which is permitted under section 66B of the Act (introduction of water into water undertaker’s supply system) or 66C of the Act (wholesale water supply by secondary water undertaker) and which is designated as a strategic supply under section 66G of the Act (designation of strategic supply) or introductions of water by the Licensee which are so permitted and which are designated as a collective strategic supply under section 66H of the Act (designation of collective strategic supply); and

“Welsh water undertaker” means any water undertaker whose area is wholly or mainly in Wales and whose supply system the Licensee uses for the purposes of supplying water to the premises of its customers.

(9) For the purposes of Part A of these conditions, paragraph (1) has effect as if it was a Condition A2 Direction given to the Licensee by the Authority in accordance with condition 2 of Part A.

2. Revocation

(10) Subject to the following provisions of this condition, a Part A revocation notice shall not be served or take effect while the Licensee is a qualifying water supply licensee.

(11) Where the Authority is satisfied that arrangements have been made to ensure that activities relating to any relevant introduction will be properly carried on after the Licensee's water supply licence is revoked:

- (d) paragraph (1) ceases to apply; and
- (e) if a Part A revocation notice has been served on the Licensee and the date specified in that notice has passed, the Licensee's water supply licence shall be revoked immediately.

3. Prohibition on introduction

(1) The Licensee shall not introduce water from any water source in pursuance of its licence into any Welsh water undertaker's relevant potable supply system until the Chief Inspector of Drinking Water for Wales has served notice on the Licensee stating that they have conducted a satisfactory audit in relation to compliance with the relevant regulatory standards and other requirements applicable to the water source and treatment works used by the Licensee in relation to that introduction.

(2) In paragraph (1)—

(a) "relevant potable supply system" means any supply system within the meaning of section 17B(5)(a) of the Act (meaning of supply system) that conveys water which is required to be wholesome at the time of supply by section 68 of the Act (duties with respect to water quality);⁷

(b) the reference to the treatment works used by the Licensee shall be construed consistently with the reference to a water undertaker's treatment works in section 17B(5)(a) of the Act;⁸ and

⁷ See section 86 of the Act.

⁸ See section 68 of the Act (duties with respect to water quality) and the Water Supply (Water Quality) Regulations 2000 S.I. 2000/3184 (as amended by S.I. 2001/2885, S.I. 2002/2469, S.I. 2005/2035, S.I. 2007/2734, S.I. 2010/996, S.I. 2010/991 and S.I. 2016/614) and the Water Supply (Water Quality) Regulations 2001 S.I. 2001/3911 (W. 323) (as amended by S.I. 2005/2035, S.I. 2007/3374 (W.299), S.I. 2010/994 (W.99) and S.I. 2016/410 (W.128)) made under sections 67 (standards of wholesomeness) and 69 (regulations for preserving water quality) of the Act.

- (c) the reference to the Chief Inspector of Drinking Water for Wales shall be construed as a reference to the Chief Inspector of Drinking Water if section 86(1B)(b) of the Act applies.

4. Special Administration

- (3) Whether or not the Licensee is a qualifying water supply licensee, the Licensee shall at all times ensure that, if a special administration order were made in relation to it, the Licensee would have available to it sufficient rights and assets to enable the special administrator to manage the affairs, business and property of the Licensee so as to ensure that the purposes of such an order could be achieved.
- (4) Where a Licensee is a subsidiary of another company and its ultimate parent company is not a relevant undertaker, the Licensee shall, within 30 days of its Licence coming into force, procure from its ultimate parent company legally enforceable undertakings in favour of the Licensee in a form determined by the Authority and expressed to remain in force for as long as the Licensee holds a water supply licence which gives a wholesale or supplementary authorisation.
- (5) The undertakings referred to in paragraph (2) shall provide that the ultimate parent company shall not, and shall procure that its subsidiaries shall not, cause or contribute to a contravention of this paragraph by the Licensee.

(d) In this condition—

“**subsidiary**” has the same meaning as in section 1159 of the Companies Act 2006 (subsidiary, holding company and wholly-owned subsidiary)

“**ultimate parent company**” shall be construed in accordance with [paragraph 9 of Schedule 4 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410)]; and

“**business**”, “**property**” and “**special administration order**” have the same meanings as in section 23 of the Act (meaning and effect of special administration order).

5. Customer transfer protocol

- (6) (a) For the purposes of this Condition, the “Protocol” means the customer transfer protocol—
- (i) complying with the requirements of sub-paragraphs (c) to (f);

(ii) served by the Authority on the Licensee when or after the date on which its licence comes into force; and

(iii) as subsequently amended from time to time in accordance with this Condition.

(b) The Licensee shall comply with the Protocol.

(c) In relation to circumstances where a water supply licensee proposes to introduce water in pursuance of its licence, or the cessation of such an introduction is proposed, the Protocol shall provide a clear, simple and standardised process for the timely and efficient transfer of supplies to premises of customers—

(i) between any water undertaker and any water supply licensee; and

(ii) between any two water supply licensees.

(d) The Protocol shall—

(i) make the same provision for all of the transfers referred to in sub-paragraph (c);

and

(ii) include provisions for its amendment which shall—

(1) allow the Authority and such other persons as the Protocol shall specify to propose amendments;

(2) subject to sub-paragraph (3), require the agreement of the Authority and such majorities, as the Protocol shall specify, of water undertakers and of water supply licensees with wholesale or supplementary authorisations, before any amendment can be made; and

(3) 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.

(e) The Protocol shall include provisions to the effect that, where—

- (i) any water undertaker or water supply licensee (“the old supplier”) is supplying water to the premises of a customer;
 - (ii) that customer has failed to pay the old supplier’s charges for that supply;
 - (iii) those charges have been demanded by notice served on the customer;
- and
- (iv) 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.

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

Appendix 3: Proposed modification to the conditions of water companies' appointments

Set out below is an illustrative example of the proposed text of an appointment condition to retain these existing obligations on water undertakers in relation to the introduction of water by holders of new water supply licences with wholesale or supplementary authorisations. Please note that, for ease of comparison, Appendix 4 shows the changes from the equivalent existing conditions (paragraphs 1 to 4 of Condition R (Provision of combined and wholesale water supplies) and Condition S (Customer transfer protocol)).

Condition S: Introductions of water under the water supply licensing regime

Introduction

- 1 For purposes of this Condition:
 - (a) "Licensee" means a water supply licensee;
 - (b) "Primary Water Undertaker" is a water undertaker whose supply system is or will be used for the purposes of enabling the Licensee to provide water supplies to premises in accordance with the Licensee's retail or restricted retail authorisation;
 - (c) the "Protocol" means the "**Customer Transfer Protocol**" -
 - (i) complying with the requirements of paragraphs 8 to 11 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;

(c) “Secondary Water Undertaker” is a water undertaker which, at the request of a Licensee, provides or will provide a supply of water to be introduced into the Primary Water Undertaker’s supply system, with the consent of the Primary Water Undertaker, to enable the Licensee to provide water supplies to premises in accordance with the Licensee’s retail or restricted retail authorisation; and

(d) “Statutory Guidance” means any code or guidance issued by the Authority under the Act that makes provision about the terms and conditions of an agreement for the performance of duties under sections 66A, 66B or 66C in relation to the introduction of water by a Licensee in accordance with its water supply licence.

2 (1) This Condition applies to, and makes provision about, circumstances where a Licensee with a wholesale or supplementary authorisation:

- (a) requests permission to introduce water into the Primary Water Undertaker’s supply system in order to supply premises in accordance with the Licensee’s retail or restricted retail authorisation; **or**
- (b) requests a Secondary Water Undertaker to provide a supply of water to be introduced into the Primary Undertaker’s supply system (with the consent of that undertaker) in order to provide water supplies to premises in accordance with the Licensee’s retail or restricted retail authorisation.

The Access Code

3 (1) The Appointee shall have an Access Code which complies with paragraphs 4 to 6 of this condition.

(2) The Appointee shall comply with its Access Code.

4 (1) The Access Code shall -

- (a) conform to any Statutory Guidance; and
 - (b) set out -
 - (i) the Appointee's procedure (including timetables) for dealing with a request to which this Condition applies, including requests under sections 66B or 66C, made to it by a Licensee (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) upon which the Appointee will offer to perform each relevant duty under sections 66A, 66B and 66C and indicative charges for performing each such duty (which indicative charges shall themselves be calculated in accordance with any relevant guidance).
- (2) In this paragraph and in paragraph 5 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.

- 5 (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 Statutory Guidance, the Appointee shall revise its Access Code to conform to the revised Statutory 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.

- 6 (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.

Customer transfer protocol

- 7 The Appointee shall comply with the Protocol.
- 8 In relation to circumstances where a Licensee proposes to introduce water in pursuance of its licence, or the cessation of such an introduction is proposed, 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 Licensee; and
 - (b) between any two Licensees.
- 9 The Protocol shall -
 - (a) make the same provision for all of the transfers referred to in paragraph 4 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 Licensees with wholesale or supplementary authorisations, 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.

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

- (a) any water undertaker or Licensee ("the old supplier") is supplying water to the premises of a customer;
- (b) that customer has failed to pay outstanding charges due to the Old Supplier in respect of 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.

11 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.

Application

Note: The following paragraph is only intended for 'NAVs' and Cholderton and District Water Company Limited

12 (1) Paragraphs 1 to 11 of this Condition shall only apply from and for such time and to such extent as may be specified by the Authority from time to time by relevant notice.

(2) The Appointee shall notify the Authority immediately of the fact and terms of each request the Appointee receives from a water supply licensee to permit the introduction of water into the Appointee's supply system pursuant to section 66B or 66C.

(3) Under sub-paragraph (1) -

- (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.

Appendix 4: Comparison of proposed modification with water companies' existing obligations

For ease of comparison, this Appendix shows the changes in the illustrative text of the proposed new condition set out in Appendix 3 above from the equivalent existing conditions that apply to water undertakers.

This comparison is limited to the substantive provisions relevant to all water undertakers (paragraphs 1 to 11 of the illustrative example). The equivalent existing conditions are paragraphs 1 to 4 of Condition R (Provision of combined and wholesale water supplies) and Condition S (Customer transfer protocol). Please note that some of the changes shown (particularly the definition of "Protocol") relate to movements of text rather than changes in the wording.

Condition R: ~~Provision~~S - introductions of ~~combined~~water under the water supply licensing regime

Introduction

1 For purposes of this Condition:

(a) "Licensee" means a water supply licensee;

(b) "Primary Water Undertaker" is a water undertaker whose supply system is or will be used for the purposes of enabling the Licensee to provide water supplies to premises in accordance with the Licensee's retail or restricted retail authorisation;

(c) the "Protocol" means the "**Customer Transfer Protocol**" -

(i) complying with the requirements of paragraphs 8 to 11 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;

(c) “Secondary Water Undertaker” is a water undertaker which, at the request of a Licensee, provides or will provide a supply of water to be introduced into the Primary Water Undertaker’s supply system, with the consent of the Primary Water Undertaker, to enable the Licensee to provide water supplies to premises in accordance with the Licensee’s retail or restricted retail authorisation; and

(d) “Statutory Guidance” means any code or guidance issued by the Authority under the Act that makes provision about the terms and conditions of an agreement for the performance of duties under sections 66A, 66B or 66C in relation to the introduction of water by a Licensee in accordance with its water supply licence.

42 (1) This Condition applies to, and makes provision about, circumstances where a Licensee with a wholesale ~~water supplier~~ or supplementary authorisation:

(a) requests permission to introduce water into the Primary Water Undertaker’s supply system in order to supply premises in accordance with the Licensee’s retail or restricted retail authorisation; or

(b) requests a Secondary Water Undertaker to provide a supply of water to be introduced into the Primary Undertaker’s supply system (with the consent of that undertaker) in order to provide water supplies to premises in accordance with the Licensee’s retail or restricted retail authorisation.

The Access Code

23 (1) The Appointee shall have an Access Code which complies with paragraphs 24 to 46 of this condition.

(2) The Appointee shall comply with its Access Code.

34 (1)- The Access Code shall -

(a) conform to ~~the guidance for the time being issued under section 66D(4);~~ any Statutory Guidance; and

(b)- set out -

(i)- the Appointee's procedure (including timetables) for dealing with a request ~~made to it by a licensed water supplier to which this Condition applies, including requests~~ under sections ~~66A, 66B or 66C,~~ made to it by a Licensee (which procedure shall itself conform to any relevant guidance);

(ii) ~~the~~ 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 relevant duty under sections ~~66A to, 66B and~~ 66A to, 66B and 66C and indicative charges for performing each such ~~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 [35](#) 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.

[45](#) (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),~~ [Statutory Guidance](#), the Appointee shall revise its Access Code to conform to the revised ~~guidance~~ [Statutory 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.

~~56~~ (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.

~~[...]~~

~~Condition S:-~~

Customer transfer protocol

~~7 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.~~

~~437~~ The Appointee shall comply with the Protocol.

~~448~~ The~~In relation to circumstances where a Licensee proposes to introduce water in pursuance of its licence, or the cessation of such an introduction is proposed,~~ 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~~Licensee; and
- ~~(b)-~~ between any two ~~licensed water suppliers~~Licensees.

~~459~~ The Protocol shall -

- ~~(a)-~~ make the same provision for all of the transfers referred to in paragraph ~~34~~ 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~~Licensees with wholesale or supplementary authorisations, 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.

4610 The Protocol shall include provisions to the effect that, where -

- (a)- any water undertaker or ~~licensed water supplier~~ Licensee ("the old supplier") is supplying water to the premises of a customer;
- (b)- that customer has failed to pay ~~the old supplier's~~ outstanding charges due to the Old Supplier in respect of 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.

11 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.

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.

Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

Phone: 0121 644 7500
Fax: 0121 644 7533
Website: www.ofwat.gov.uk
Email: mailbox@ofwat.gsi.gov.uk

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