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## Wholesale and supplementary authorisations, and condition S

In this document we:

- summarise the responses to our consultation on wholesale and supplementary authorisations of new water supply licences, and condition S of the instruments of appointments of water companies<sup>1</sup>;
- respond to the issues raised by those responses; and
- set out our next steps.

### The consultation

The [Water Act 2014](#) requires the current Water Supply Licence (WSL) regime to change to support an expanded scope of markets and customer choice for business, charity and public sector customers (business customers) served by companies. 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. Our '[Consultation on Wholesale and Supplementary Authorisations and Condition S](#)' ('the consultation') explained how we will replace one part of the existing WSL regime: the wholesale elements of combined water supply licences (CSLs).

The purpose of the CSL is to enable companies with a water resource to input water into the public water supply for the restricted purpose of supplying water to the CSL holder's own retail customers. There are currently five companies that hold CSLs but to date the regime has not resulted in a licence holder's water being put into a water company's network.

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<sup>1</sup> By "water companies" we mean, in this notice, companies holding appointments as water undertakers.

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. We explained that 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.

We also proposed text for a new condition S to combine the existing obligations of water companies on the customer transfer protocol (CTP) and access codes. The CTP, which is covered by the current condition S, sets out how to transfer customers between suppliers and will be retained for customers with wholesale supplies from or to a WSSL with a wholesale or supplementary authorisation only. Access codes, which are covered by the current Condition R, set out the procedure for dealing with requests from licence holders relating to wholesale water supplies. 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 in England and the transitional restrictions on the wholesale authorisations of new water supply licences are removed.

The questions we asked in the consultation were:

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?

## **Consultation responses and our replies to them**

The consultation resulted in nine responses – six from incumbent water companies, one from a non-incumbent CSL holder, and one from a New Appointment and Variations (NAV) – a non-incumbent network. Most respondents were in favour of our approach, or otherwise had no comments. Some respondents had further questions, which we set out and address here.

### **Should we treat NAVs differently?**

All but one of the existing small water companies (NAVs and Cholderton) have the current versions of Conditions R and S, which are both effectively suspended until we activate them. We consider that this approach is proportionate for small water companies and so should be reflected in the new Condition S.

### **Should we have text about the content of the customer transfer protocol in the instrument of appointment at all, as it is something that Ofwat, not licence holders, produces?**

The current language is the same as the proposed revised Condition S. It limits the content of the customer transfer protocol that Ofwat can produce and we consider that it continues to be necessary and appropriate.

### **Will the proposed amended Condition S come into force on 3 April 2017?**

We intend for it to come into effect on the same day as the new water supply licences go live (which will be the day of retail market opening). This is currently expected to be in April 2017.

### **Will the existing Customer Transfer Protocol arrangements continue to apply in relation to customers transferred under the wholesale authorisations from April 2017?**

The existing CTP arrangements will continue to apply to the transfer of customers supplied with wholesale water by a WSSL with a wholesale authorisation after retail market opening.

### **Will water companies still be required to review their network access code relating to combined access requests not later than 15 October annually?**

Yes - the existing obligation to review network access codes annually by 15 October will continue to apply as per the revised Condition S paragraph 5.

**Is Ofwat proposing to issue any other guidance than that previously issued?**

We do not anticipate issuing any materially different guidance before April 2017. We propose to remove the specific reference in licence conditions to “guidance under section 66D(4)” of the Water Industry Act 1991 because the Water Act 2014 will replace this section in due course. It is therefore possible that the legal basis for relevant guidance may change.

**Is Ofwat proposing to issue charging guidance relating to wholesale authorisations?**

No - the costs principle will continue to govern pricing and we do not currently intend to issue any further guidance.

**Can Ofwat confirm that there will be no consequential amendments to the wholesale-retail code, the market arrangements code, or the wholesale contract for wholesale services required as result of the implementation of the proposed standard licence conditions, the application process, or the proposed modifications to condition S?**

We do not consider that changes to the codes are required to enable the wholesale authorisation or supplementary authorisation to come into effect. We will consider whether to establish a code working group to reflect on whether changes to the codes would assist the development of the market. The cost principle and the restrictions on the size of customer that can be served are currently being retained in England and Wales. In England these will be removed as the wholesale market is opened, and so consequential amendments will be required when this occurs, after 2019. These restrictions will be retained in Wales.

**Do we need to use section 55 in Wales?**

The Water Act 2014 changes the legal basis for the water supply licensing regime in Wales as well as in England. Consequential licence modifications are therefore needed for Welsh water companies and we consider that it is appropriate to use section 55 of the Water Act 2014 to implement them.

## Conclusion

In light of the consultation, we concluded that the proposed text for the licence conditions for the wholesale and supplementary authorisations was appropriate. The, ‘[Standard licence conditions for water supply licences with wholesale and supplementary authorisations](#)’ have been approved and published by Defra.

We will accept applications for WSSLs with wholesale and supplementary authorisations from 1 November 2016.

## Next steps and indicative timetable

- 31 October 2016 – Ofwat publishes final version of [application form](#) and [guidance](#).
- 1 November 2016 – Ofwat starts accepting applications for WAs and SAs.
- Late 2016 / early 2017 – Licence modification made inserting revised Condition S.
- Retail market opening (expected in April 2017) – new water supply licences come into effect