
31 October 2016

Trust in water

Summary of responses to the consultation on Ofwat's revised application process for Water Supply and Sewerage Licences

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1. Purpose of this document

On 10 October 2016 we issued a [consultation document](#) setting out our proposed update to our application form and guidance document for applications for future retail and wholesale water supply and sewerage licences (collectively and individually referred to as WSSLs).

The original application form and guidance document had been in place since March 2016. The application form and guidance document has been updated to include:

- Information about self-supply applications.
- Information about an option for applicants to apply for a wholesale or supplementary authorisation(s) to allow them to introduce water into an appointed water company's network (subject to the Drinking Water Inspectorate's requirements).
- Further guidance to further clarify the three requirements we assess WSSL applications against – managerial competency, financial stability and technical competency.

Through our consultation, interested parties were invited to comment on our revised application form and guidance document and, in particular, to let us have their views on the following:

- The revised application form;
- Whether the revised application guidance provided sufficient detail for applicants to apply for a water supply and/or sewerage licence with retail, restricted retail, wholesale and/or supplementary authorisation; and
- Whether there were any elements of guidance that were missing, or alternatively that are not required, in the revised application guidance.

The consultation closed on 21 October 2016. This document summarises the responses we received and our process for finalising our guidance document.

2. Responses to the consultation

We received a total of nine responses to our consultation. This included:

- A response from a current WSSL holder;
- five responses from appointed companies;
- a response from the Environment Agency;
- a response from Natural Resources Wales (NRW); and
- a response from the Consumer Council for Water (CCWater).

Copies of the responses we received are published separately on our website.

Overall, the responses were supportive of our proposed updates to the application form and guidance document. One respondent stated that “it is clear and covers the required points well”, whilst another said “the form and guidance are well set out and clear”.

The comments received ranged from points around making the guidance clearer to suggestions for additional questions in the application form, for example about the technical competencies. Details of the responses we received and our response to them are summarised in Table 1 below.

Following the consultation responses, we have made some additional minor drafting changes to the application form and guidance document to provide greater clarity to applicants about our requirements and to provide clearer references on the application form in relation to the guidance document.

Table 1 Main issues raised in responses to the consultation

Respondent	Issue raised	Ofwat response	Have we amended the application form or guidance document to reflect this?
Anglian Water Business Limited	<p>In relation to section 2, question 6, we suggest that the question should read “Please confirm whether the applicant intends to apply for or has received MOSL’s market entry assurance certification for the use of low or high volume interface with market systems?” This recognises that some applicants will already have market entry assurance certification e.g. those who already have retail authorisations and are now applying for wholesale or supplementary authorisations.</p>	<p>We agree that the suggested minor drafting amendment of including “or has” in the question should be included in the form to reflect that some applicants may apply for additional authorisations at a later date to their original application.</p>	<p>Yes – we have included this minor amendment to the question.</p>
	<p>On page 7 of the guidance document, in relation to application fees it states that the fee “will be applicable regardless of the type of WSSL or the number of authorisations requested in relation to those WSSL(s) in a single application form.” Does that mean that a further fee of £5,250 is payable by retailers who have recently applied and received WSSLs for retail authorisations and wish to apply for wholesale or supplementary authorisations but have been prevented from doing so because the application process is yet to open? A wholesale or supplementary application submitted in November/December 2016 will be largely identical to the retail application submitted just a few weeks previously, therefore Ofwat's processing costs will be substantially reduced. On this basis, we suggest that there is a case for waiving the fee for a wholesale or supplementary authorisation submitted during this transitional period (until market opening) when a retail application has already been made.</p>	<p>We acknowledge that there may be instances where a WSSL licence holder that has been recently been granted a retail and/or restricted retail authorisation may wish to apply for the wholesale/supplementary authorisation as soon as these are available. In such cases it is possible that portions of their application may be substantially the same as the retail/restricted retail application. However, there may also be applications that are substantially different in parts across all three competencies – managerial competency, financial stability and technical competency.</p>	<p>No</p>

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		<p>We therefore still need to undertake a detailed assessment of the full application to ensure that the applicant is able to meet its obligations if it operates with the additional authorisations, which are substantially different to those for the retail/restricted retail authorisations.</p> <p>The fee of £5,250 reflects that we will need to undertake a full assessment of the application to check that the applicant has demonstrated its suitability to hold a wholesale and/or supplementary authorisation.</p> <p>We therefore will not be waiving or reducing this fee to process applications from applicants that already hold a retail / restricted retail authorisation and are seeking additional authorisation(s).</p>	
<p>Anglian Water Services Limited</p>	<p>The guidance document states applicants should provide contact details including business address, telephone number and email address. However, the application form does not include a field for this in section 1, question 3.</p>	<p>We agree that these fields should be included on the form.</p>	<p>Yes - new fields for telephone number and email address have now been included in section 1, question 3.</p>
	<p>In relation to section 1, question 8, it is currently unclear whether the professional qualifications should be relevant to managing a regulated utility or whether all professional and</p>	<p>We agree that the question has been drafted in broad terms and refers to “any professional or</p>	<p>Yes – we have added to the question “any professional or industry qualifications relevant to the</p>

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	<p>technical qualifications should be included in the answer to this question. It would be helpful to clarify that only those professional qualifications relevant to the management of a licensed water and/or sewerage retailer need to be included.</p>	<p>industry qualifications” and that it would be useful to clarify what we are assessing here.</p>	<p>management of the applicant as a licensed retailer and wholesaler as appropriate”.</p>
	<p>In section 1, question 13, the application form and guidance document appear to ask for different information. The application form asks for details of the applicant's financial backer. However, the guidance asks for information regarding the organisational structure and management team, corporate strategy, resources for delivery etc. The guidance is likely to be referring to the information to be included in section 4 (Enclosures), but as this is conflated with the guidance to answering question 13 it is possible that confusion may arise. Therefore the guidance relating to enclosures should be clearly separate to that answering question 13.</p>	<p>We have reviewed the sections that are referenced to in the application form in relation to question 13 (financial backer statement) and have updated this to a section of the guidance that only deals with financial backers.</p>	<p>Yes – we have updated the reference on the application form.</p>
	<p>In section 2, question 7, there is some repetition in the application form as question 7a asks for the “full details of the intended transfer” and question 7b asks for “details of the approach, together with expected timings and details of the transfer”. As both ask for details of the transfer, we suggest that details are provided in section 7b with section 7a being a yes/no question.</p>	<p>We agree that making these modifications to the form makes the questions clearer.</p>	<p>Yes – we have amended questions 7a and 7b to provide greater clarity.</p>
<p>South West Water</p>	<p>We suggest that Ofwat considers whether more explicit detail should be included for applications for wholesale or supplementary licences. The application form does not ask for specific question(s) about how, for wholesale or supplementary licences, the applicant will ensure it has</p>	<p>We agree that question 2 in section 2 could be amended to be clearer and ask for specific information in relation to the technical competencies and</p>	<p>Yes – we have split the question to distinguish between retail / restricted retail and self-supply authorisations and wholesale and supplementary authorisations.</p>

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	<p>adequate knowledge of these things, and confirmation that it has processes in place to secure adequate control.</p> <p>Whilst the guidance clearly shows consultation with the DWI and Environment Agency, explicit questions in section 2, seeking focussed information in this regard, could both ease the process, and bring further trust and confidence to the licensing regime.</p> <p>We suggest that Ofwat considers the merits of an explicit section to enable applicants to provide details specific to self-supply licences, as described on pages 19 – 20 of the guidance (in addition to the Appendix requirements).</p> <p>It would also be useful to provide further guidance about what information should be provided, such as site plans or supply point identification, as this detail could help drafting and application of the resulting licence.</p>	<p>wholesale and supplementary authorisations.</p> <p>Self-supply applications have the following differences in relation to what information is submitted:</p> <p>no requirement to submit a certificate of adequacy; and a requirement for a list of associated persons to be served or sites to be submitted as part of the applications.</p> <p>Whilst we not consider that a separate section to reflect this, we agree it would be useful to clarify these differences in the relevant requirements sections.</p>	<p>Yes - but rather than add a specific separate section we have amended the existing requirements on the application form to ensure accuracy.</p> <p>The application form has been updated to reflect the fact that self-supply applicants do not need to submit a certificate of adequacy and the wording in relation to the sites to be served has been amended to include a list of associated persons served.</p>
Yorkshire Water	<p>We have noted the minor changes to the application form from the existing format, which we support.</p> <p>Given the importance of meeting standards associated with the introduction of water to an undertaker's network, we feel greater prominence should be given in the application form</p>	See above.	Yes – see above.

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	<p>to the subject of question 2 in section 2 of the form related to wholesale technical capability and knowledge.</p> <p>There are several pages in both the application form and the guidance document devoted to demonstration of managerial competence, financial stability and retail capability, yet only one question related to technical and capability information in support of a wholesale authorisation.</p> <p>We recognise that behind the application itself lies a host of regulations, controls and assurance processes to ensure the quality of water and safety of the water supply network, however we believe the application process could place greater emphasis on these aspects, by introducing dedicated questions relating to wholesale capability.</p>		

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Environment Agency	<p>Given the requirement for applicants to demonstrate technical competence as per section 3.2 Section 2 p26, a specific question relating to this requirement should be included in the application form. Experience of assessing applications received to date demonstrate that some applicants are not always providing adequate information on these areas.</p> <p>The evidence of technical competence needs more than just a declaration to work with NRW/Environment Agency/DWI – applicants could be asked to refer to guidance etc.</p>	<p>Section 2 contains two questions which relate to the technical competencies, namely questions 2 and 3 which ask for demonstration of knowledge of the duties of licensees and the systems and procedure that have been put in place (question 2) and details of how the applicant will ensure it has adequate knowledge of the difference in the duties between England and Wales, and that systems and procedures have been put in place to comply with those duties (question 3). However, we note that these questions are not always recognised as relating to the technical competencies could more specifically draw out the need for applicants to provide adequate information. See response above in relation to the requirements for wholesale authorisations which also deals with this point.</p>	<p>No – but we have made amendments to section 2 question 2 to make this clearer.</p>

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	<p>The table on page 24 is considered helpful although the Environment Agency requirements on technical competence go beyond what is required by the regulations listed. The technical competences could also be set out in this table to include the items listed in section 3.2 as below:</p> <ul style="list-style-type: none"> Drainage, sewage and sewerage systems; Sewerage and sewage processes; Environment impacts from sewerage and sewage; Customer contact incident responsibilities including tracking calls, response timescales and service monitoring and review; Sustainable drainage; Water Resources and Drought Management Plans; Unplanned events; and Promotion of water efficiency. 	<p>We have reviewed the guidance document and note that these items are already included under section 3.2 under the Requirements for the Environment Agency/NRW heading.</p> <p>However, we will include a sentence within the guidance document directing applicants to the relevant headings for Environment Agency, NRW and DWI as appropriate to sign post applicants. Additionally, we will include a reference on the application form to the table and relevant headings.</p>	<p>No – but we have include additional sign-posting for applicants in relation to the technical competencies.</p>

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	<p>In Section 3.4 - Evidence of technical competency, the applicant is only asked to provide a declaration that they will work with Environment Agency/NRW/DWI rather than provide broader evidence on the competency requirements as set out in section 3.2. Additional evidence beyond just this declaration does need to be provided.</p>	<p>We agree that this could include a sentence to refer to the other information that the applicant should be submitting with its application to demonstrate technical competency.</p>	<p>Yes – we have amended the text to refer to the other information required to be submitted.</p>

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	<p>It is suggested that the guidance should address how capability and competence is assured when companies expand their customer base significantly. Currently an annual provision of a certificate of Adequacy by retailers may not be adequate. It is considered that a significant material change should precipitate a new CoA or some other type of re-assessment.</p> <p>The Environment Agency supports the view that applicants' commitments to obtain capability and competence should be enough to obtain a licence but Ofwat need to check these are completed and in place before market entry. There is a general acceptance that companies may not have capability and competence in all areas at the time of application so guidance may need to explain that details of training and development plans are expected in such cases.</p>	<p>We consider that the current WSSL assessment process strikes an appropriate balance between seeking suitable assurances from applicants, whilst not being a potential barrier to entry to the market.</p> <p>We consider the Certificate of Adequacy, (which needs to be submitted between the 1 March and 1 April each year) to be a sufficient assurance that the WSSL licence holder has sufficient management, financial, technical, operational, and other resources for it to meet the obligations set out in Standard Licence Condition A4.</p> <p>Should an issue arise after a Certificate of Adequacy is submitted and this impacts on customers' experience they will be able to switch supplier or make a complaint to the relevant organisation (CCWater or the appropriate regulator). Action could then be taken by the relevant regulator if required.</p>	

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		<p>Additionally, there is an obligation on the licensee to notify Ofwat immediately if it is unable to certify at any time that:</p> <p>(a) that it is or will be unable to certify that it can meet its obligations, or</p> <p>(b) of any actual or expected change of circumstance which would or might prevent the Licensee from being able to submit a certificate if the obligation to do so fell at the time of the change of circumstances.</p>	
Natural Resources for Wales	Inclusion of an additional question/box on the application form that requires the applicant to provide information in relation to the technical competencies set out in the guidance document.	See responses above in relation to wholesale authorisations.	No – but we have made amendments to existing questions to make this clearer.
Consumer Council for Water	<p>We propose that the following additions and amendments (denoted in bold) are made to the existing text relating to CCWater within the guidance document (section 3.4, p33):</p> <p>The applicant is required to provide a declaration that, if granted a licence, it will work positively with the Consumer Council for Water (CCWater). CCWater has a duty to represent and provide information to consumers, including those supplied by a licensee.</p>	<p>We have defined CCWater earlier in the guidance document at page 11.</p> <p>We have reviewed the text within the guidance document and agree that the insertion of the suggested text is helpful to applicants to understand the</p>	Yes – the guidance document has been updated to reflect the suggested changes in relation to paragraphs 2 and 3.

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	<p>Section 29 of the WIA91 gives CCWater the power to investigate a complaint against any water supply or sewerage licensee, where the customer has been unable to resolve the matter directly. Applicants should highlight the role of CCWater within their own complaint procedures.</p> <p>Applicants should also be aware that CCWater will be able to direct licensees to provide information that it requires for the purpose of carrying out its functions.</p> <p>The requirement for a declaration is intended to make the applicant aware of CCWater and its role and that they will need to work together. Further information on CCWater's role is available on its website www.ccwater.org.uk.</p>	<p>requirements to include this information in their complaints procedure for customers given that the customers served by a WSSL have a statutory right to refer complaints to CCWater.</p>	

3. Next steps

Having reviewed the consultation responses received, we do not propose to make any major revisions to the guidance document at this point in time. We have, however, made minor changes to provide clarity or provide additional sign-posting to applicants, as detailed in the final column of Table 1.

We have now published the revised application form and guidance document on our website. These documents take effect for new applications submitted to Ofwat after 1 November 2016. We will continue to process existing applications which we received prior to 1st November 2016.

We will keep the application form and guidance document under review to ensure they remain fit for purpose.
