

28 March 2018

Trust in water

# **Consultation under Section 13 of the Water Industry Act 1991 on proposed modification to Condition B of new appointees' conditions of appointment**

[www.ofwat.gov.uk](http://www.ofwat.gov.uk)

**Ofwat**

## About this document

This document invites comments on our proposal to modify condition B of the new appointees' conditions of appointment.

Under section 13 of the Water Industry Act 1991 (WIA91), we are able to modify the conditions of a company's appointment if it agrees to the modifications we are proposing to make.

This document and the attached appendix is a Notice under section 13 of the WIA91.

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## Responding to this consultation

We invite stakeholders to comment on our proposed modification by **30 April 2018**. You can email your responses to [John.Kennedy@ofwat.gsi.gov.uk](mailto:John.Kennedy@ofwat.gsi.gov.uk) or post them to:

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If you wish to discuss any aspect of this document, please direct your enquiry to John Kennedy on 0121 644 7598 or by email to [John.Kennedy@ofwat.gsi.gov.uk](mailto:John.Kennedy@ofwat.gsi.gov.uk).

We will publish responses to this document on our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk), unless you indicate that you would like your response to remain unpublished.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.

## Background

All new appointees (with the exception of Albion Eco) have a licence condition that requires that they charge no more than the 'Relevant Charge' of the incumbent (i.e. the previous undertaker). The Relevant Charge is defined by reference to the incumbent's charges scheme. This cap on their charges is considered a more proportionate way of regulating new appointees than subjecting them to a full price review.

However, since the retail business market opened in England in 2017, many incumbents have exited that market. Where the incumbents have exited the business retail market, they are no longer required to publish business charges in their charges schemes and there is therefore no longer a published comparator to act as a cap on their charges to business customers. There is therefore a need to find an alternative way of regulating new appointees' charges to business customers in these retail exit areas.

## What are the changes that we are proposing?

This modification will make amendments to paragraph 1A of Condition B of new appointees' conditions of appointment to reflect that the retail charges can no longer be pegged to the incumbent's charge, where retail exit has occurred.

We have considered various options and have agreed with new appointees that the most appropriate solution is to base prices for business customers on the default tariffs of the relevant acquiring licensee (i.e. the retailer to whom the relevant incumbent's business customers were transferred).

The approach to default tariffs is set out in the [Retail Exit Code](#) issued by Ofwat. It sets out that default tariffs for SMEs - defined as those with less than 250 employees - should be based on PR16 price controls. The same approach is taken for larger customers that were transferred. We consider that, in areas where the incumbent has exited, new appointees should peg prices for SMEs and for large customers that are already customers of the new appointee prior to April 2018 to the prices for these customers set by the acquiring licensee. The Retail Exit Code takes a different approach to setting the default tariffs for new larger business customers of the acquiring licensee, specifying that the price charged to these customers should be reasonable and non-discriminatory, rather than directly linking it to PR16. We propose that a similar approach should be taken for new large customers of new appointees. We therefore consider that, in areas where the incumbent has exited, new appointees should charge large businesses who become customers of the new appointee after April 2018, prices that are reasonable and non-discriminatory.

While Ofwat's [Charges Scheme Rules](#) require that new appointees publish their charges schemes by 22 February in every year, there is no prescribed date by which acquiring licensees must publish their schemes of terms and conditions. This lack of alignment around timing means that a new appointee may need to finalise its charges scheme before the acquiring licensee publishes its scheme of terms and conditions for the forthcoming charging year.

We propose that new appointees use the most recently published tariff when they publish their charges on 22 February and may (but will not be obliged to) adjust their charges schemes if the acquiring licensee subsequently publishes revised default business tariffs.

If an acquiring licensee sells its business, the default tariff will be the tariff for the customers transferred to the new licensee.

A copy of the proposed amendments is attached at Appendix 1. These amendments are proposed for the conditions of appointment of the following companies:

Albion Water Ltd

Icosa Water Services Limited

Independent Water Networks Ltd

Leep Water Networks Ltd

Severn Trent Services (Water and Sewerage) Ltd (sewerage only)

SSE Water Ltd

Veolia Water Projects

## **Next steps**

We would like responses to this document by **30 April 2018**.

## Appendix 1: Proposed modification to condition B

This appendix sets out the legal drafting for the proposed modification.

**Note: Underlined text to be inserted and text that has been struck through to be deleted.**

### 1A. Application and transitional provisions

- 1A.1 Paragraphs 3 to 17 of this Condition shall not apply until the Water Services Regulation Authority has given notice to the Appointee of their application.
- 1A.2 Before the Water Services Regulation Authority gives notice under sub-paragraph 1A.1, it may determine the question of what the Adjustment Factor should be for such number of consecutive Charging Years (not exceeding five) as the Water Services Regulation Authority considers appropriate, starting with the Charging Year starting on 1st April immediately after it has given notice under sub-paragraph 1A.1. The Water Services Regulation Authority shall give notice to the Appointee of its determination not later than the thirty-first day of December immediately preceding the first of the Charging Years in respect of which it is setting the Adjustment Factor.
- 1A.3 Subject to sub-paragraph 1A.5, until the Water Services Regulation Authority has given notice under sub-paragraph 1A.1, the Appointee shall not make or fix the amount of any Relevant Charge for any supply of water provided, or provision of sewerage services made, or reception, treatment and disposal of trade effluent which takes place, at an amount that is greater than the amount set out in sub-paragraph 1A.4. of such Relevant Charge fixed by the Incumbent for the same Charging Year that would, but for the Appointments or any subsequent variation, have applied to any particular part of the Area.
- 1A.4 A Relevant Charge may not be greater than:
- a) for Eligible Customers, where the Incumbent's area is a retail exit area, a charge fixed in the most recent Scheme of Terms and Conditions published by the Relevant Licensee for Transferred Premises, that would have been applicable to each Eligible Customer had that customer occupied Transferred Premises and been a customer of the Relevant Licensee;
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  - b) for all other charges, a Relevant Charge fixed by the Incumbent for the same charging year that would, but for the Appointment[s] or any subsequent variation, have applied to any particular part of the Area.



1A.5 Sub-paragraph 1A.3 does not apply to Eligible Customers who employ more than 250 employees and who became customers of the Appointee after 1 April 2018. For these customers, the Appointee's charges must be reasonable and must comply with Condition E.

1A.6 Sub-paragraph 1A.4 does not place an obligation on the Appointee to change its Relevant Charges more than once with respect to any Charging Year.

1A.7 For the purposes of this paragraph 1A:

"Relevant Charge" means, for any supply of water provided, or provision of sewerage services made, or reception, treatment and disposal of trade effluent which takes place, a charge fixed under any such charges scheme as is referred to in section 143 of the Water Industry Act 1991;

"Eligible Customer" means the owner or occupier of Eligible Premises in the Appointee's Area and "Eligible Premises" has the meaning given in the Wholesale-Retail Code;

"Relevant Licensee" means the Acquiring Licensee, or its successors in title, specified in the Incumbent's Exit Application, and "Acquiring Licensee" and "Exit Application" have the meaning given in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016;

"Scheme of Terms and Conditions" means a Scheme of Terms and Conditions made under the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016; and

"Transferred Premises" has the meaning given in the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

## **Explanatory comments**

This has the effect of retaining the status quo for all Relevant Charges other than charges to business customers in a retail exit area because the incumbent company has exited the business retail market (and so is no longer required to publish business tariffs) (sub-paragraph 1A.4(a)).

For business customers in a retail exit area the relevant cap becomes the 'default tariff' of the customers transferred to the acquiring licensee (sub-paragraph 1A.4(b)). If an acquiring licensee sells its business, the default tariff will be the tariff for the customers transferred to the new licensee. The exception is large customers (ie who employ more than 250 customers) who become customers of the Appointee after 1 April 2018. It is proposed that these customers will be excluded from the comparative price control cap. The charges to these customers must be reasonable and non-discriminatory (sub-paragraph 1A.5). This puts them in a similar position to new customers of an acquiring licensee.

An acquiring licensee must publish a new scheme as soon as possible after it has revised the scheme (see Regulation 29 of the Retail Exit Regulations).<sup>1</sup> If an acquiring licensee amends its scheme mid-year, the Appointee is not required to make a consequential change, but may do so (sub-paragraph 1A.6).

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<sup>1</sup> The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016