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Trust in water

# Application guidance for Water Supply and Sewerage Licence (WSSL) (version 3)

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The impacts of Covid-19 are being felt across the whole of the UK economy. Understandably, this is a time of considerable uncertainty for all market participants and Ofwat has to ensure that it continues to protect the interests of customers in the business retail market. Within this context, Ofwat has to ensure prospective licensees provide robust evidence and assurance of their financial stability. We are publishing this clarification to [our guidance for Water Supply and Sewerage Licence \(WSSL\) applications](#) (**'our guidance'**) to set out our expectations.

[Our guidance](#) sets out that we may suspend the WSSL application process under certain circumstances. Where we suspend the processing of an application, we will set out our reasoning for this and provide the applicant with the opportunity to address the concerns we have raised. If we are satisfied that the applicant has responded fully and satisfactorily, the application and timetable will resume from the point at which the application process was suspended. We may also refuse to progress a WSSL application if, for any reason, the applicant has not provided sufficient evidence to demonstrate that it is suitable to be granted a WSSL, including where the applicant has not submitted a viable business plan.

Given the challenges posed by Covid-19 and the potential impact of adverse economic conditions on the business retail market, we will apply our guidance to only grant licences where applicants provide compelling evidence of robust capitalisation and strong financial resilience. This should be demonstrated by substantial shareholder investment that is clearly ring-fenced for that applicant with no recourse to [market liquidity support measures](#).

Ofwat will only progress applications where applicants provide sufficient evidence to demonstrate they have taken into account the impacts of Covid-19 on their business plans. This should include impacts on financial projections and evidence of testing against a number of scenarios (such as a possible reduction in customer numbers and/or adverse customer growth). We also expect applicants to evidence that they are keeping up to date with developments in the business retail market.

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## About this document

This guidance is designed to assist those applying for water supply licences and/or sewerage licences (collectively and individually referred to as WSSLs). We will review and update this guidance, where necessary, to ensure that it remains fit for purpose. For those wanting more detail to decide whether or not to apply for a WSSL, please refer to the information published on our [website](#).

Applicants seeking to apply for a WSSL with a retail authorisation that is limited to self-supply should read the related guidance and complete the separate [application form](#).

**Please note, this document sets out our understanding of the applicable law. This document is not a substitute for reading and understanding that applicable law. The document should be read in conjunction with relevant legal instruments and case law. Anyone in doubt about how they may be affected should seek independent legal advice.**

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# 1. Introduction

## 1.1 Structure of this guidance

This guidance is structured as follows:

- Chapter 2 describes the licence application process including the requirements on the applicant and the stages of the assessment process.
- Chapter 3 provides guidance on the information to be included in the business plan and attached as supporting information by the applicant.
- Appendix 1 provides a copy of the prescribed form of Certificate of Adequacy which must also be completed and submitted with each application.

## 1.2 Background

The Water Act 2014 (WA14) introduced a number of measures to reform the water sector in England and Wales. From April 2017, these reforms resulted in:

- changes to the water supply licensing regime by removing the thresholds applicable to eligible customers served by an appointed company and operating wholly or mainly in England (eligible English customers), allowing a larger number of eligible business, charity and public sector customers (“Business Customers”) in England and Wales to choose who supplies them<sup>1</sup>;
- the introduction of a sewerage licensing regime for English business customers;
- the introduction of a licence limited to self-supply (where the water supply or sewerage system of an undertaker operating wholly or mainly in England is used); and
- a new regulatory regime for the use of appointed companies’ water supply systems and/or sewerage systems through the use of market codes.

As of April 2017 when the expanded retail market opened, eligible English customers have been able to choose their retail supplier for both water supply and sewerage services. All retailers who wish to participate in this market must apply for and be granted a WSSL(s) with a retail authorisation. Eligible English customers are also

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<sup>1</sup> The threshold amount prior to the WA14 (i.e. the total quantity of water estimated to be supplied to the premises annually by the licensee) was not less than 5 megalitres (MI) in relation to premises supplied with water using the supply network of an appointed water company whose area is wholly or mainly in England and not less than 50 MI in relation to premises supplied with water using the supply system of an appointed water company whose area is wholly or mainly in Wales.

able to choose to act as their own retailer by having a WSSL with a retail authorisation that is limited to self-supply. This allows them to supply their own sites and those of persons associated with them, but would not allow them to become a retailer for any other sites. For more information on becoming a licensee limited to self-supply please see our [website](#).

Prior to the WA14 amendments, the legislation allowed competition for the provision of retail and wholesale services in water for the largest business customers in England and Wales. Retail services included activities such as billing and customer services and retailers (holders of a Water Supply Licence (WSL), with a 'retail authorisation') were able to buy wholesale services such as a water supply from appointed companies. Wholesale activities (the introduction of water into an appointed company's network) could be undertaken by the holder of a Combined WSL. Holders of WSLs could compete with other WSLs and the appointed company in its own area, providing retail and wholesale services to business customers that consumed water over the threshold requirement<sup>2</sup>.

For those business customers who use the water supply system of an appointed company whose area is wholly or mainly in Wales, the scope of the market has remained as it was prior to the WA14 amendments, reflecting the policy position of the Welsh Government. Those business customers who use the supply system of an appointed company whose area is wholly or mainly in Wales and who meet the 50MI threshold requirement continue to be able to choose a different supplier for water retail services (eligible Welsh customers). All retailers who wish to participate in this market have to apply for a WSSL with a restricted retail authorisation allowing them to provide only water retail services to eligible Welsh customers. It is not possible for a WSSL to provide sewerage services to these Welsh customers.

Customers who met the eligibility criteria under the WSL regime<sup>3</sup> are now able to choose a WSSL wholesaler. Those wishing to provide a wholesale service to customers served by appointed water companies that are based wholly or mainly based in England must hold a WSSL with a wholesale authorisation. In order to supply customers that are served by appointed water companies that are based wholly or mainly based in Wales, they need a supplementary authorisation.

The WSSL incorporates [standard licence conditions](#), which are published by the Secretary of State in consultation with Welsh Ministers. If a licensee fails to comply

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<sup>2</sup> The threshold amount prior to the WA14 amendments was the total quantity of water estimated to be supplied to the premises annually by the licensee is not less than 5 megalitres (MI)<sup>3</sup> in relation to premises supplied with water using the supply network of an appointed water company whose area is wholly or mainly in England and not less than 50 MI in relation to premises supplied with water using the supply system of an appointed water company whose area is wholly or mainly in Wales.

<sup>3</sup> See above footnote.

with its licence conditions, enforcement action may be taken against it by Ofwat or the Secretary of State and, ultimately, its licence may be revoked.

## 2. The licence application process

An entity that wishes to use an appointed company's supply system or sewerage system for the purpose of supplying water and/or providing sewerage services to customers at eligible premises in England and/or Wales will need a WSSL. This chapter outlines the steps involved in the application process for a WSSL.

Our intention is that the application process should be thorough but not overly burdensome. The requirements as set out in the [Licence Application Notice](#)<sup>4</sup>, the application form attached to the Licence Application Notice, and this guidance ensures that prospective licensees know that they must prove they are fully competent in all areas before we will grant a WSSL.

In the final section of this chapter, we set out detailed process flow charts, which illustrate the various steps, responsible parties, and intended timings through the application process.

### 2.1 Understanding the market arrangements

There is a legal and regulatory framework in place to facilitate the business retail market, and provide the necessary market governance. This framework includes a number of codes which together set out the rules for the business retail market with each code having a different role to play in helping to govern the market. We list the most significant codes below.

- [Market Arrangements Code](#) (MAC);
- [Wholesale Retail Code](#) (WRC);
- [Retail Exit Code](#) (REC);
- [Business customer protection code of practice](#) (CPCoP); and
- [Interim Supply Code](#) (ISC).

**The MAC** is a non-statutory code which is brought into effect by conditions in WSSLs' licences and wholesalers' Instruments of Appointment (the MAC Condition). The MAC applies to all licensees and appointees in England and Wales as a consequence of the MAC Condition.

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<sup>4</sup> The Licence Application Notice is a Notice made by Ofwat under section 17F of the WIA91 which determines the requirements which relate to applications for Water Supply and Sewerage Licences, including information on the licence application process and information to be provided by prospective licensees.



**The WRC** is a statutory code which sets out the rules (including business terms, operational terms and market terms) that apply to interactions between wholesalers and retailers. Retailers and wholesalers in the business retail market must comply with the WRC.

Schedule 1 Part 2 of the **WRC** focusses on the Business Terms for the market. The Business Terms are designed to establish the rights and obligations of the parties to a Wholesale Contract in respect of the services which are the subject of the Wholesale Contract. The Business Terms also cover a number of other matters of a contractual nature, for example limits of liability for a breach of the Wholesale Contract, confidentiality obligations and third party rights. Section 9 of the WRC explains that a retailer may select to pay its Primary Charges to the wholesaler by either Pre-Payment (Section 9.2.2) or Post-Payment (Section 9.2.3) and provides detail on the requirements of both options.

**The REC** is made under the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (**Retail Exit Regulations 2016**). The regulations provide for retail exit – that is, for an appointed company to exit the non-household retail market and transfer all of its business customers to one or more licensee. The area of appointment of the appointed company then becomes a Retail Exit Area. The REC requires any licensee operating in a Retail Exit Area to make and keep under review a scheme setting out the terms and conditions that will apply to all customers of the licensee in the Retail Exit Area if the customers have not otherwise negotiated a contract. The Retail Exit Regulations require Ofwat to issue a code setting out the basis for such schemes of terms and conditions and the REC has been issued in compliance with this requirement.

In certain circumstances, a licensee may cease to supply its customers in the business retail market - for example, because of the termination of a wholesale contract as a result of insolvency. To deal with these circumstances, Ofwat issued **the ISC** which provides for the arrangements necessary to ensure the continued provision of retail services in circumstances where a licensee ceases to supply and appropriate protections for customers and other market participants.

**The CPCoP** places obligations on licensees in relation to five areas<sup>5</sup> of market activity in order to protect eligible customers and to further the Code Principles.

The final codes, consultations and consultation responses can all be found [here](#).

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<sup>5</sup> Sales and marketing; the provision of information to Non-Household Customers; the Transfer of Non-Household Customers; billing and complaint handling; and dispute resolution.

A WSSL applicant must be able to satisfy us that it understands the business retail market. Chapter 3 below sets out the type of information we would expect from an applicant to demonstrate its understanding and knowledge. To assist applicants, a summary document has been published to help navigate the [legal framework](#) and understand the roles of the various stakeholders in the market.

## **2.2 Potential joint applications for licences in England and Wales and licences in Scotland**

The WA14 seeks to establish a cross-border market between England, Wales and Scotland, recognising the separate legal systems and regulators. It will be possible to make an application for licences in England and/or Wales and/or Scotland. However this guidance covers only applications to Ofwat for licences in England and/or Wales.

The assessment processes for applications made for a licence to operate in England and/or Wales and Scotland will be run separately by Ofwat and the Water Industry Commission for Scotland (WICS) respectively. Additionally, Ofwat and WICS will issue their own separate licences. Further information can be found in the [explanatory guidance](#) by Ofwat and WICS.

## **2.3 Making an application**

The Water Industry Act 1991 (WIA91) (as amended by the WA14) provides that the Secretary of State and Ofwat may grant applications for WSSLs. The Secretary of State has issued a general authorisation to Ofwat to grant WSSLs. Ofwat has issued a [Licence Application Notice](#) determining the form and manner in which applications may be made and an application form is attached to that notice.

Applications for a WSSL must be made in writing and contain the information set out in the Licence Application Notice and the application form. We must have enough information to allow us to assess whether the applicant has the appropriate skills and competencies required of a licensee.

## **2.4 Payment of application fees**

At the same time that an application is made, an applicant must pay an application fee to have its application assessed. The application fee is intended to cover the average cost incurred by Ofwat in processing each application. It does not include any provision for the ongoing costs of regulating licensees.

The application fee as described in clause 5 of the Licence Application Notice is a fee of £5,250. This 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. Payment should be made to Ofwat by cheque or by electronic transfer. Receipts will be issued on request.

Bank details for BACS electronic transfers are as follows:

- Bank name: RBS
- Account name: WATER SVC REG AUTH
- Account number: 10009817
- Sort code: 60-70-80

An application will not be processed until the application fee has been paid. If you require further information please contact Ofwat's Case Management Office at [casemanagementoffice@ofwat.gsi.gov.uk](mailto:casemanagementoffice@ofwat.gsi.gov.uk) for further details.

## **2.5 Initial screening and public consultation**

We will only accept applications that are complete, contain all the information we require and when the application fee has been received. We will not commence our assessment process until we have all the required information and the application fee has been received.

As soon as reasonably practicable following our decision that we are satisfied that a completed application has been received, we will provide the applicant with written confirmation. The written confirmation will signal the start of our assessment process. We aim to notify the applicant that its application has or has not been accepted as complete within five working days of receipt of the application.

Once we are satisfied that an application is complete, we will publish a notice of the application on our website. The notice will contain only the information provided in question A8 of the application form. The notice will set out the following details, as provided by the applicant in the application form:

- applicant's name;
- applicant's address;
- applicant's registered company number and parent company details (if applicable);
- a brief summary of the services that they will provide and business plan; and

- any further information the applicant considers to be relevant to a public consultation.

Publication of this notice will commence our 20 working day public consultation period on the application.

As part of completing the application form, applicants are required to confirm that they consent to us sharing the information provided in its application with the Drinking Water Inspectorate (DWI), Environment Agency (EA) and Natural Resources Wales (NRW) to enable them to complete an assessment of the technical competency of the applicant. Ofwat has made these other regulators aware of the commercial confidentiality of some of the information submitted as part of the application. During the 20 working day public consultation period, a review of the application by the DWI, the EA, and where relevant the NRW, will take place. In the event that such a review identifies areas of concern and further information is required, it may in some instances take longer than 20 working days to complete the review.

With regard to information requests, in accordance with the Freedom of Information Act 2000 (FoIA), the Data Protection Act 1998 and from May 2018 the General Data Protection Regulations (GDPR), and the Environmental Information Regulations 2004, we may be required to publish or disclose information. If the applicant considers that information provided should be treated as confidential they should explain to Ofwat why this is the case. If we receive a request for disclosure of the information we will take into account the representations provided, but we cannot give an assurance that we can maintain confidentiality in all circumstances.

## 2.6 Our assessment of applications

As part of the assessment of an application, we will consider whether the applicant has the appropriate level of competency to hold the type of WSSL requested. We will do this by assessing a number of key areas, including managerial, financial and technical competencies.

- **Managerial competency** is a key element of our assessment criteria. In particular, we look at: the skills, qualifications and experience of the applicant's staff; whether the applicant has adequate knowledge and understanding of the duties of a licensee under the law and licence conditions; its systems and procedures in place for complying with those duties; and the overall quality of the submission. We may invite applicants to a meeting for applicants to demonstrate further their managerial competence.

- With regards to **financial stability**, we consider whether the applicant has sufficient financial resources to finance its obligations under the law and to deliver its business plan and whether it has the capacity to raise new funds in future.
- The applicant should demonstrate that it has **technical competency** relating to measures expected by the DWI, EA and/ or NRW - for example, knowledge of the relevant security and emergency measures required. The DWI, EA and NRW will provide an assessment of whether applicants have the technical expertise required.

As detailed above there will be a public consultation on each application and we will consider third party representations submitted in response to the consultation when assessing a licence application. Ordinarily, we expect to provide copies of any third party responses to the applicant. If the responses raise any substantial concerns, we will attempt to resolve these in discussion with the applicant. Having received their responses, we would not expect to consult further with those third parties that make representations on an application.

We aim to complete our detailed assessment of an application within 60 working days of confirming receipt of a complete application (this includes the public consultation referred to above). This is an indicative timescale only. The process may take longer should we require further clarification or information from the applicant or if complex issues arise from our assessment or the assessment by the other regulators or from representations or objections to our consultation. Section 2.9 below provides information about us suspending or refusing a licence application.

Where we receive an application that requires amendments to the published WSSL [Standard Licence Conditions](#) we will need to run a further consultation of 28 days on the proposed amended licence conditions. If we need to run the additional consultation, we aim to process the application within 90 working days of confirming receipt of a complete application.

Chapter 3 of this document and the application form provide details of the information which applicants need to provide us with to demonstrate these competencies. We have not set prescriptive criteria that we will require applicants to fulfil before we will grant a WSSL. The requirements set out aim to ensure that any entity granted a WSSL is competent to be a licensee.

## 2.7 Market entry assurance certification

Ofwat's application process for WSSLs and MOSL's process for gaining a [Market Entry Assurance Certificate](#) are distinct and separate processes. However, the outcomes of each process are interdependent.

We will not formally grant a WSSL to an applicant until we have received confirmation from MOSL that the applicant has satisfactorily completed Market Entry Assurance Certification (MEAC). MEAC provides assurance that a company seeking to become a trading party within the retail market has the required systems, processes and capabilities to fulfil its market obligations. Without a MEAC from MOSL, an applicant will not be granted a WSSL and will be unable to participate in the market. MOSL will not permit entry to the market entry assurance process unless an applicant has, at the very least, applied for a WSSL.

For clarity, completing the MEAC is a necessary step for Ofwat's consideration of whether to grant a WSSL. However, the completion of the market entry assurance process in no way removes the discretion for Ofwat to approve or reject a licence application.

Following grant of a WSSL, the applicant must also satisfy the remaining trading conditions, including, for example, signing wholesale contracts with those appointed companies in whose area it wishes to provide retail services to customers.

## 2.8 Granting a WSSL

Upon successful completion of our assessment process and confirmation from MOSL that the applicant has completed the MEAC process, we will be able formally to grant the WSSL. Under section 17F(7) WIA91, as soon as practicable after granting a licence, we are required to serve a copy of the licence on the licensee. We must also serve a copy on:

- the Secretary of State;
- Welsh Ministers;
- the Drinking Water Inspectorate (DWI);
- the Environment Agency (EA)
- Natural Resources Wales (NRW)
- the Consumer Council for Water (CCWater)
- each relevant appointed company<sup>6</sup>; and

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<sup>6</sup> This is a company whose supply system or sewerage system could be used by the licensee

- all other WSSL licensees.

We will retain a copy of the licence or variation of the licence on our public register.

When a licence is granted, we will issue a press notice. We will also maintain a list of licensees on our [website](#).

## **2.9 Suspending or refusing a licence application**

We may suspend the licence application process under certain circumstances. Examples would be where the applicant has not provided sufficient details for the DWI or the EA/NRW to complete their assessment of the application, or if the applicant needs to take action following representations we receive from third parties during the public consultation.

If we suspend the processing of an application, we will explain why and invite the applicant to remedy the defects. The onus is on the applicant to provide the necessary additional material and we will not continue to consider the application until this is received. If the defects are remedied successfully, the application and timetable will resume from the point at which the application process was suspended.

Suspending a licence application is not the same as refusing an application. We may refuse an application if, for any reason, the applicant has not demonstrated that it is suitable to be granted a WSSL. Although not an exhaustive list of reasons for refusal, examples of situations in which we consider it may be appropriate for us to refuse an application include:

- if the applicant has failed to successfully complete the market entry assurance process;
- if the applicant has failed consistently to provide the required information;
- if the applicant does not demonstrate to us, the DWI or the EA/NRW that it is competent to hold a licence. For example, if:
  - there is concern about the ability of the applicant to fulfil regulatory requirements; the applicant has not shown a sufficient understanding of what its responsibilities will be as a licensee or the potential consequences of its actions;
  - the applicant does not have a viable business plan;
  - key personnel are shown to be unsuitable; or

- the applicant has previously had a licence revoked or application refused and cannot show that it has taken steps to address the reasons for the original revocation or refusal.
- if we consider that information supplied is false, misleading or incomplete.

This is not an exhaustive list of reasons for refusal.

Section 17F(4) WIA91 provides that if we propose to refuse an application, we must notify the applicant:

- stating that we propose to refuse the application;
- stating the reasons why we propose to refuse the application; and
- specifying the time within which representations or objections to the proposed refusal may be made.

The applicant will have the opportunity to make representations or to submit the necessary additional information to us within a specified time, normally 10 working days. We must consider any representations or objections which are duly made and not withdrawn and we may refer this additional information to the DWI, the EA or the NRW as appropriate. Following consideration of any representations we will confirm our decision.

An applicant that has had an application refused is not prohibited from making another application.

## **2.10 The self-supply application process**

A WSSL with a retail authorisation that is limited to self-supply allows a person to provide retail services to itself and associated persons, for example companies in the same group.

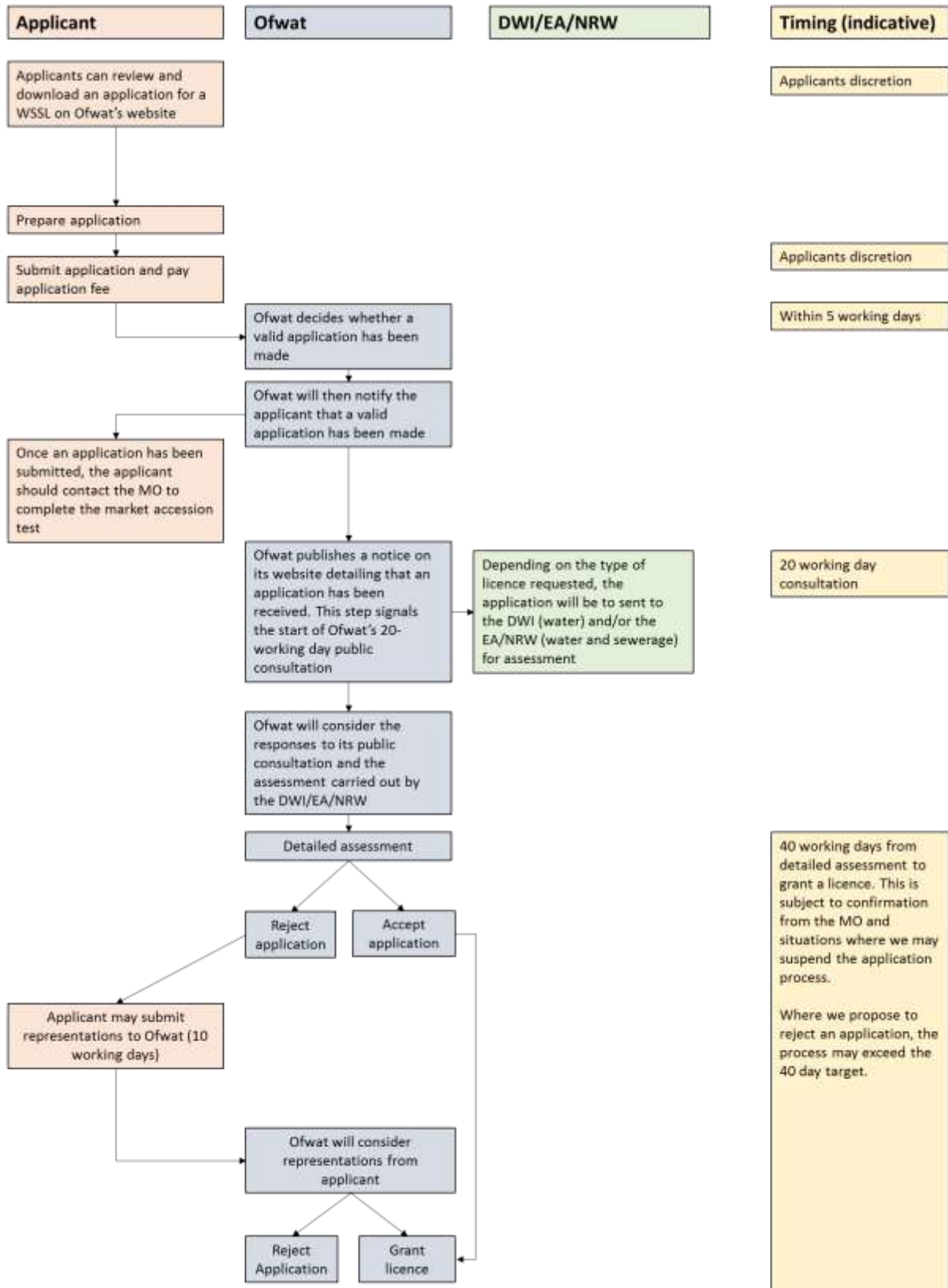
A WSSL limited to self-supply will only be granted to supply premises supplied or served using the supply or sewerage system of an undertaker whose area is wholly or mainly in England. A WSSL limited to self-supply will not be available to provide services to premises supplied using the supply system of an undertaker whose area is wholly or mainly in Wales.

Given that a WSSL limited to self-supply cannot be used to serve customers other than associated persons, these licences have a separate application process. The [application guidance](#) document and [application form](#) is published on our website.



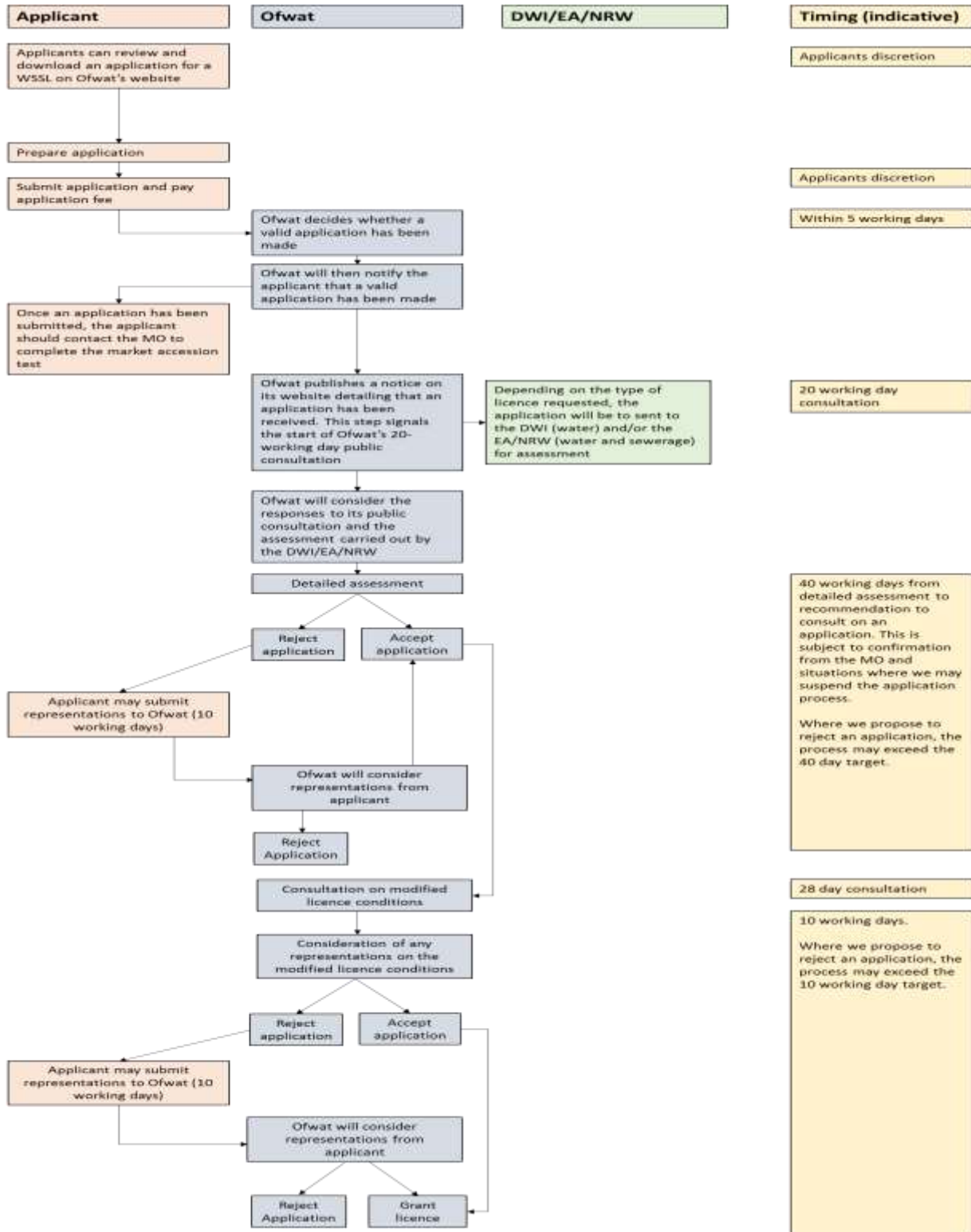
## 2.11 Application flow chart– standard process

The flow chart below illustrates the stages for the various parties and the intended timings through the application process.



## 2.12 Application flow chart– applications requiring modification to licence conditions

The flow chart below illustrates the stages for the various parties and the intended timings through the application process in circumstances where the standard licence conditions require modification.



## **3. The application form and supporting information**

This chapter outlines the information and supporting documentation that needs to be submitted to Ofwat when making an application for a WSSL. Each application will be considered on its own merits. The applicant's supporting information is key to the application and provides the applicant with the opportunity to demonstrate that it has the required competency. We consider that this approach will give confidence to customers, appointed companies and other licensees that any entity granted a WSSL has the competency to be a licensee and has the competency to comply with the Standard Licence Conditions. The following sections provide details on the information we require to assess applications.

If the applicant has appointed a third party to act of its behalf during the application process, a signed letter of authority from the applicant must be included within the application.

### **3.1 General guidance for completion of supporting information**

Applicants should consider the following points:

- The specific guidance set out at the beginning of each section below is designed to be a helpful prompt to the applicant on the type of information we require to undertake our assessment. It does not preclude additional information being provided that the applicant feels may be helpful in support of its application.
- Providing answers to the business plan questions is the essential minimum required, and Ofwat expects the applicant to demonstrate that it has the required managerial, financial and technical capability to perform adequately the activities authorised of a licensee.
- The purpose of the business plan is to assess the applicant's proposed approach to undertaking the licensed activities. To that end the business plan should refer to the applicant's approach to only those licensed activities.
- The business plan should demonstrate that the applicant's licensed business will be suitably independent of the applicant's (or any related companies') other activities.
- If the applicant would find it helpful, Ofwat has no objection to them making use of relevant documents, or extracts of documents, that may have been prepared for the MOSL Market Entry Assurance Certification Process to support their answers to these questions. However, applicants should ensure

that any documents relied on do directly address the requirements set out here and should provide detailed cross-references to the relevant parts of those documents. So for example, it is unlikely that an answer that said simply “see accompanying document” would be sufficient. We would expect a short narrative explaining what this document was and how the evidence therein addressed the requirements set out.

The business plan should be accompanied by a covering letter confirming that it has been agreed by those persons concerned in the direction or management of the applicant.

## **3.2 Business plan**

### **Purpose of this section**

To assess an applicant’s financial and managerial viability, we will require each applicant to submit a business plan. The applicant must set out the business plan in the prescribed structure. This guidance provides the issues to be addressed in each section of the business plan.

As part of the application process, we will need to assess the applicant’s capabilities to carry out the activities authorised by the type of licence for which it is applying. The applicant’s business plan is a key document in support of the applicant’s licence application and provides the applicant with the opportunity to demonstrate that it has the following expected competencies:

- Relevant knowledge, expertise and experience;
- Financial acumen and business viability;
- Effective governance and management arrangements.

We will require applicants to provide specific supporting information to assist us in our assessment. We will look to see whether an applicant has demonstrated that it has appropriate financial stability, managerial and technical competence, and an understanding of the legal framework and of the responsibilities of a licensee.

### **General guidance for completion of business plans**

Applicants should bear in mind the following points:

- The specific guidance set out at the beginning of each section below is designed to be a helpful prompt to the applicant on the type of information we require to undertake our assessment. It does not preclude additional

information being provided that the applicant feels may be helpful in support of its application.

- Providing answers to the business plan questions is the essential minimum required, and Ofwat expects the applicant to demonstrate that it has the required managerial, financial and technical capability to perform adequately the activities authorised by the licence.
- The purpose of the business plan is to assess the applicant's proposed approach to undertaking the licensed activities. To that end the business plan should refer to the applicant's approach to only those licensed activities.
- The business plan should demonstrate that the applicant's licensed business will be suitably independent of the applicant's (or any related companies') other activities.

When considering an applicant's submission, Ofwat will have particular regard to the following for all sections of the business plan:

- The completeness, detail and reasonableness of the assumptions;
- Documentary evidence of the formal adoption of the business plan by the responsible person; and
- Consistency across and between all sections of the business plan.

Applicants should follow the prescribed structure below when writing their business plans. Please see the following sections for more information:

- Executive Summary
- Corporate Structure and Management Team
- Strategy
- Delivery
- Financial and asset information

## **Content of business plan**

The applicant's business plan should as a minimum cover the three years following its application, be presented in the prescribed structure set out above, and contain the information detailed below. These requirements should be seen as a minimum; in most cases we would expect applicants to provide additional supporting information where this is appropriate. The onus is on the applicant to ensure that its plan includes all information necessary to make an informed assessment of its financial and managerial viability.

The business plan should include any assumptions underlying the applicant's financial projections.

## **Executive summary**

This section of the business plan should provide us with a high level summary of key points from the applicant's business plan and the activities it plans to undertake if granted a WSSL.

### **3.3 Corporate structure and management team**

#### **Purpose of the section**

The purpose of this section of the business plan is for the applicant to demonstrate that it has the knowledge, expertise and experience to operate a water supply and/or sewerage services business. The applicant should ensure that its business will comply with best practice in corporate governance. It is essential for the applicant to demonstrate that its licensed business is suitably independent of the applicant's (or its parent's or associate's) other activities. In particular, the applicant must ensure arms-length trading in situations where the applicant is part of a group of companies that includes an appointed company that is already regulated by Ofwat.

#### **Outline of issues to be addressed**

To demonstrate this, the applicant should ensure that the following questions have been addressed:

- What is the organisational structure of the business? Applicants should provide a diagram/organogram of the overall company structure. Where the applicant is a member of a group of companies, the diagram should show all the members of the group up to and including any ultimate controller. The diagram should illustrate each company which directly or indirectly controls the applicant, and the companies that are directly or indirectly controlled by the applicant.
- What are the key roles within the organisation and their associated responsibilities? Applicants should provide a management structure diagram/organogram. Where there is overlap in personnel holding positions in the proposed WSSL business with an appointed company that is already regulated by Ofwat, at least one member of the senior management team should be independent of that other company. Where there is overlap in roles, these should be clearly identified.

- What skills does the applicant consider are prerequisites of the key roles identified?
- Who has been identified to fill those key roles?
- Do the individuals identified to fill the key roles have the skills necessary to fulfil the requirements of the key roles? The applicant should include the CVs of those people who have been appointed to the key roles and other key personnel. These should include details of any professional qualifications and relevant experience.
- Details of any sub-contractors who will be involved in the delivery and the operations of the licensed activity. This should include details of any agreement the applicant will have with a third party to deliver any of its retail functions (i.e. to subcontract or out-source these services). Applicants should include:
  - information on how the applicant plans to use the third party and the role they will have in enabling the applicant to operate as a licensee;
  - an explanation of the relevant duties and responsibilities of the third party and how these have been contracted;
  - detail on the managerial and technical capability of the third party in providing support to the licensee; and
  - contingency plans the applicant has for operating in the market should this agreement end (e.g. if the relationship was to break down).
- Who are the applicant's advisers, including accountants, lawyers and technical advisers? Applicants should provide information on how the applicant plans use their expertise.
- What are the applicant's corporate governance arrangements?
- Applicants should state, if they are associated with an appointed company, the steps which that appointed company has taken to ensure that the applicant is given no undue preference compared to other market participants.

## **3.4 Strategy**

### **Purpose of the section**

In this section, the applicant should set out its strategy for its intended operation in the market and environment.

### **Outline of areas to be addressed**

- What is the applicant's strategy for the business? In particular:

- What are the applicant's objectives for the first three years of operation?
  - What are the timescales for delivery of the applicant's key overall objectives?
  - Which customers will the applicant be serving or targeting?
  - Whether the applicant intends to be an acquiring licensee under the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016?
  - Are there any significant changes expected to the applicant's core business that could impact on its licensed activities?
- What are the applicant's forecasted number of customers to be served by the WSSL during the first three years of its operation?
  - What impact, if any, will the proposed strategy have on customers? For example, how will the level of service to existing customers be affected and how does the applicant propose to measure this impact?
  - What pricing strategy does the applicant propose to adopt with its customers?

## 3.5 Delivery

### Purpose of the section

In this section, the applicant should set out the resources that it considers it requires to deliver the strategy described in section 3.4.

### Outline of areas to be addressed

- Details of the workforce in terms of total planned numbers and by department;
- What are the current proposals for staff development including recruitment or training plans? This should include details about training plans to address the technical competencies.
- How does the applicant intend to manage its key relationships (e.g. with its wholesalers, CCWater, the DWI, the EA and the NRW as appropriate)? Applicants should provide a declaration signed by a responsible person to state that they will work with CCWater, DWI and EA/NRW as appropriate. Also see section 3.7 for information on the technical competencies.
- What provisions has the applicant made to deal with emergency situations and issues of security of supply and what allowances have been made for associated costs? For example, how will the applicant work with the wholesalers to manage and resolve emergencies such as drinking water



contamination? Also see section 3.7 for information on the technical competencies.

- What provisions has the applicant made to manage operational incidents? For example, how will the applicant work with the wholesaler to manage and resolve operational matters such as planned and unplanned interruptions to supply and metering issues? Also see section 3.7 for information on the technical competencies.
- What complaints handling process does the applicant intend to have in place to operate as a retailer? This should include details of the redress scheme in place. One of the ways customers are protected in the market is that all retailers must follow rules that Ofwat set in the CPCoP. The CPCoP sets out that when operating in the market, retailers must have an effective complaints handling process that customers can access at no cost and have in place an effective alternative complaint process (redress scheme) that is readily accessible to customers.

## **3.6 Financial and asset information**

### **Purpose of the section**

With regards to financial stability, we consider whether the applicant has sufficient financial resources to finance its obligation under the law and to deliver its business plan and has the capacity to raise new funds in the future.

The applicant should demonstrate its financial acumen and the viability of the business it has proposed. This section should focus on the finance required by the business, consistent with the expenditure needs identified in the previous sections.

The financial information should be provided in the form of an Excel spreadsheet, with a clear narrative demonstrating any underlying assumptions that have been made.

### **Outline of areas to be addressed**

The application should be supported by the following enclosures and information which will provide evidence to help our assessment of the financial stability of the applicant.

- Audited statutory accounts and annual report if available.

- Opening balance sheet and relevant financial assumptions providing a detailed analysis of start-up assets and activities.
- Projected closing balance sheets for the next three years.
- Three years' projected cash flow statements.
- Three years' projected profit and loss statements. These statements should provide the projected turnover figure from licensed activities and refer to turnover from other activities if they have a material impact on financial projections. The applicant should ensure that revenue and cost forecasts are consistent with information provided in previous sections (e.g. the strategy, business model, and customer growth and retention, etc over time) and relate only to the activities that will be covered by the WSSL.
- Information on funding arrangements of the business, in particular the capital structure and working capital arrangements.
- Expose any material financing assumptions, including cost of debt or equity, critical financial indicators or covenants, implied capital structure and dividend policy to support the applicant's financial projections.
- Details of any measures that the applicant and its associated companies consider are necessary to ensure appropriate arm's length trading between themselves.
- Declaration from financial backer (if applicable). If the applicant is being supported by a financial backer, the business plan should be accompanied by a declaration from the financial backer that they are willing to provide funds based on the business plan. This should be submitted on headed paper. 'Financial backers' are those entities that the business plan indicates are expected to provide all or most of the finance for the applicant's activities over the following three year period. They may include lenders or the applicant's parent company. If finance is intended to be provided from more than one source, the applicant should provide a declaration from each major backer. These declarations will not constitute a guarantee that funds will be available, but are intended to give us additional assurance that a new licensee will be able to fund the functions of operating as a licensee.
- What resources does the applicant need to deliver its strategy? The applicant should address this question in relation to the following:
  - Assets required (for example, call centre and IT). This should be cross-referenced with the opening balance sheet where it is intended that the assets will be owned by the applicant. Where the assets are not owned by the applicant, the applicant should outline from whom (and on what commercial terms) the principal assets will be leased/ main services outsourced.

## 3.7 Technical competency

### Purpose of the section

In this section, the applicant should set out the resources that it considers it requires to deliver the strategy described in the application.

### Guidance on questions C1 and C2 of the application form

The applicant should be able to demonstrate that it has adequate knowledge of the issues set out below. For some of these requirements, for example knowledge of the relevant security and emergency measures required, the applicant may be able to fulfil this requirement by showing that it has access to advisers with adequate knowledge of these issues.

The applicant should have an adequate understanding of the legal duties and responsibilities of a licensee, and be able to set out how it will comply with these duties and responsibilities. The applicant should set out how it intends to ensure that it will:

- comply with its duties under the WIA91;
- comply with the Standard Conditions of the WSSL; and
- communicate emergencies and details of sensitive customers to the relevant appointed company.

In addition to answering the questions on the application form, we have included below an example of a table that applicants may wish to use to demonstrate how they meet the duties and obligations, in particular in relation to the requirements set out by the DWI, EA and NRW. Applicants should refer to the next two sections 'Requirements from the DWI' and 'Requirements from the EA / NRW' for guidance on the technical competencies and the requirements that their application should cover. There is further guidance on the requirements from the DWI on the [DWI website](#) and in the application [guidance document](#).

Regulation	Description	Owner	How we are/will be addressing this
<b>Water Industry Act</b>			

39C	Drought plans: provision of information	...	...	...
<b>Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008</b>				
...	...	...	...	...
<b>WSSL licence conditions</b>				
...	...	...	...	...
<b>Water Industry (Suppliers' Information) Direction 2012</b>				
...	...	...	...	...
<b>Water Supply (Water Fittings) Regulations etc.</b>				
...	...	...	...	...

## Requirements from the DWI

The DWI is concerned to ensure that applicants for a WSSL have an overall understanding of water supply and water quality issues and the potential environmental impacts that can arise from their usage of supply systems so that licensees' activities do not have a detrimental effect on an appointed company's supply system. The application form provides an opportunity for the applicant to provide evidence of its understanding of its duties and obligations.

Applicants should demonstrate an understanding of the role of the DWI and of the responsibilities of licensees under the relevant sections of the WIA91, relevant regulations, licence conditions and market codes including:

- an understanding of the relationship between the wholesaler, the retailer and the customer in relation to planned and unplanned interruptions to supply and water quality incidents. The information that should be provided in relation to this requirement includes:
  - an understanding of the communication requirements between the parties and what will be put in place in relation to these requirements;
  - details of any assistance that will be given during any incidents and to whom;
  - details of the processes and capability that will be in place to deal with such incidents; and
  - details of how sensitive sites will be dealt with.
- the regulatory requirement to provide wholesome water;
- the definition of water unfit for human consumption;

- the penalties for supplying water unfit for human consumption;
- an understanding of the reporting requirements of licensees, including the provision of information under the Water Undertakers (Information) Direction 2012 and the provision of a public record as specified in Regulation 34 of the Water Supply (Water Quality) Regulations 2010;
- the implications for licensees of the Water Supply (Water Fittings) Regulations<sup>7</sup>;
- relevant security and emergency directions issued by Defra and/or the Welsh Government. Licensees may sub-contract the implementation of the plans made under these directions, but will need an understanding of the situations that can arise and of the potential need for appointed companies to communicate directly with the licensee's customers;
- the appointed company's Water Resources Management Plan and Drought Plan and the licensee's responsibilities in helping to develop, maintain and action these plans;
- the management of planned and unplanned events including droughts; and
- the duty to promote the efficient use of water under section 93A of the WIA91.

There is further guidance on the [DWI website](#) and in the application [guidance document](#).

## Requirements from the EA / NRW

The EA and NRW are concerned to ensure that applicants for a WSSL have an overall understanding of the potential environmental impacts that can arise from their usage of water supply and/or sewerage systems. Applicants will also need an understanding of water supply and sewerage systems and their role in managing water demand. This is to ensure that licensees' work does not have a detrimental effect on the appointed water company's network, sewerage treatment processes or the environment. This will include:

- an overall understanding of domestic and non-domestic drainage, sewage (including trade effluent) and sewerage systems;
- an overall understanding of sewerage and sewage treatment processes;
- the potential environmental impacts that might arise from discharges into and from sewerage systems;

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<sup>7</sup> The Water Supply (Water Fittings) Regulations 1999 (SI 1999/1148, amended by SI 1999/1506 and SI 2005/2035).

- an understanding of the responsibilities with regard to customer contact about environmental incidents such as flooding or pollution, including:
  - details of how telephone calls will be managed and tracked both in and out of office hours;
  - details of the roles and responsibilities identified and the asset owner (if appropriate);
  - details of any set timescales for information to be forwarded to the asset owner (if appropriate) and / or the regulator (EA or NRW); and
  - details of any monitoring and reviews that will be undertaken in delivering against any set timescales.
- demonstration of knowledge and awareness of more sustainable approaches to surface water drainage (SuDS) and details of proposed customer engagement;
- demonstration of knowledge and awareness of the relevant appointed company's Water Resources Management Plan and Drought Plan and the responsibilities that exist in helping to develop, maintain and action these;
- the management of planned and unplanned events including droughts and details of support that will be provided to the relevant appointed company during these incidents; and
- demonstration of knowledge and awareness of the duty to promote the efficient use of water under section 93A of the WIA91 and details of how water efficiency will be promoted including what information will be provided to customers.

## **Further areas to be addressed**

The applicant should set out:

- How it intends to manage its key relationships (e.g. with its wholesaler(s), the DWI, NRW and the EA as appropriate)? This information is to support the declaration signed by a responsible person to state that they will work with CCWater, DWI, NRW and EA as appropriate (see section 3.9.4 below).
- What provisions it has made to manage operational incidents? For example, how will the applicant work with the wholesaler to manage and resolve operational matters such as planned and unplanned interruptions to supply and metering issues?

## 3.8 Certificate of adequacy

The [Standard Licence Conditions](#) for WSSLs place an obligation on all licence holders to submit a certificate of adequacy each year to confirm that they have sufficient management, financial, technical, operational and other resources to meet their obligations under the licence. As part of the application process for a new WSSL, applicants are required to provide a complete certificate of adequacy at the time of application.

It is important that when preparing the certificate, the applicant has in mind the details of its proposed business plan. So for example, if an applicant is preparing to become an acquiring licensee following a retail exit by one of the appointed companies, its view on the adequacy of resources should be expressed for the scale of business that will be required after the exit process has been completed. The same considerations would apply if the applicant's intended business model was to acquire a substantial portfolio of customers as a result of a competitive tendering process, or through a commercial transaction with another retailer.

The certificate of adequacy is based on self-assurance, and there is no requirement for an applicant to obtain third-party assurance. Where the applicant has chosen to undertake specific internal or external reviews prior to submission of the completed certificate, it may wish to provide a summary of these reviews as additional evidence in support of its submission.

A copy of the certificate of adequacy which needs to be completed on application is available in Appendix 1.

## 3.9 Declarations

Except in the case of an individual applicant, we would expect the declarations listed in sections 3.9.4 and 3.9.5 to be made by one of the persons named in response to question A5 of the application form. This should preferably be by the person occupying the most senior executive position within this group.

### 3.9.1 Application form declaration (section F)

The declaration made in Section F of the application form is a personal declaration made by the person signing the application form. Where that person is not an individual applicant for a licence (or licences), e.g. if the person signing the form is signing on behalf of his or her company, the term "enquiry of the applicant" means enquiry of the company.

### **3.9.2 Statement of any unspent criminal convictions**

The applicant must provide details of any criminal cases which involve the applicant (or any of the individuals concerned with the direction or management of the applicant) where the applicant (or the individuals concerned) have pleaded guilty or have been found guilty of a criminal offence and/or been subjected to a civil penalty. A statement setting out the circumstances of the case(s) must be provided.

If the applicant (or any of the individuals concerned with the direction or management of the applicant) do not have unspent convictions, then a declaration to that effect from each of the individuals must be submitted as an enclosure to the application form.

### **3.9.3 Declarations of ‘fit and proper’ status**

Subject to paragraph 3.9.2 above, a declaration must be provided as an enclosure to the application form by all persons concerned with the direction or management of the applicant, stating that the person:

- Does not have any unspent convictions;
- Has not been the subject of any adverse finding or settlement in civil proceedings;
- Is not, or has not been the subject of a regulatory investigation or disciplinary proceedings; and
- Has not been involved in the management of a business that has gone into insolvency liquidation or administration while the person has been connected with that organisation, or within one year of that connection.

### **3.9.4 A declaration from the applicant that, if granted a licence, it will work positively with CCWater, the DWI, NRW and the EA.**

The applicant is required to provide a declaration that, if granted a licence, it will work positively with the CCWater, DWI, NRW and the EA, and that it will provide information that the organisations request.

CCWater has a duty to represent and provide information to consumers, including those supplied by a licensee. 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.



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.<sup>8</sup> 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.cewater.org.uk](http://www.cewater.org.uk).

**3.9.5 Declaration that the applicant is aware of the responsibilities of licensees under the WIA91, including responsibilities in relation to security issues under section 208 WIA91, and the requirements under the MAC, WRC and REC.**

The requirement for this declaration is intended to direct the attention of the applicant to the responsibilities of licensees as set out in the WIA91, and particularly to the responsibilities in relation to security issues set out in section 208 of the WIA91. The declaration also provides reassurance that the applicant is aware of the responsibilities under the market codes.

The applicant should provide commentary as appropriate on the items in these statements.

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<sup>8</sup> See section 27H of the WIA91.

## Appendix 1: Prescribed form for certificate of adequacy

### Form of certificate of adequacy determined by the Authority pursuant to Standard Condition 4(1) for water supply and sewerage licences

Standard Condition 4 of the water supply and/or sewerage licence(s) of [insert full company name] (the “Licensee”) granted pursuant to section 17A and / or section 17BA of the Water Industry Act 1991 (the “Licence”) requires that an authorised signatory of the Licensee certify to the Authority that all of the arrangements required by Standard Condition 3 are in place and that the Licensee has, and will have until 31 March in the following year, all the management, financial, technical, operational and other resources needed for securing that it is able to meet the obligations mentioned in Standard Condition 3.

Standard Condition 3 provides that the Licensee shall ensure that all such arrangements have been made as are necessary for securing that:

- (a) it is and continues to be able to meet its obligations under:
  - (i) its Licence; and
  - (ii) any statutory requirement imposed on it and which applies to the activities authorised by its Licence; and
- (b) it has sufficient product and public liability insurance for the activities authorised by its Licence.

In compliance with Standard Licence Condition 4, and having made appropriate enquiries into the Licensee's resources, the authorised signatory whose name appears below certifies on behalf of the Licensee:

- (1) that all of the arrangements required for the Licensee to meet its obligations mentioned in Standard Condition 3 are in place; and
- (2) that the Licensee has, and will have, until 31 March [insert year], all the management, financial, technical, operational and other resources needed for securing that it is able to meet the obligations mentioned in Standard Condition 3.

**Signed** .....

**Full name** .....

**Job title** .....

**[Insert full name and job title of the director, company secretary or other authorised signatory responsible for this certificate. Please refer to the Guidance for the appropriate level of person to give the certificate]**

**Date** .....

**For and on behalf of** .....

**[Insert licensee/ proposed licensee name]**

## Glossary of terms

**Application fee:** Fee that is to accompany an application, as set out in the Licence Application Notice.

**Application form:** The form as contained in the schedule to the Licence Application Notice.

**Appointed company:** A company holding an appointment under the WIA91 as a water and/or sewerage undertaker for a defined geographic area of England and Wales.

**Business customers:** Eligible business, charity and public sector customers.

**CCWater:** The Consumer Council for Water.

**Certificate of adequacy:** A statement from the licensee that it continues to have adequate resources and competencies to meet its obligations under its water supply and sewerage licences for at least 12 months.

**CPCoP:** Business customer protection code of practice.

**Drinking water safety plans:** Preventative plans encompassing all steps in water protection from catchment to the consumer. See DWI Information letter 06/2004 (available on DWI's website) for more information.

**DWI:** The Drinking Water Inspectorate, responsible for regulating public water supplies in England and Wales. The DWI is responsible for assessing the quality of drinking water, taking enforcement action if standards are not being met, and taking appropriate action when water is unfit for human consumption.

**EA:** The Environmental Agency, an executive, non-departmental government body that has a statutory duty to protect and enhance the environment in England.

**Instrument of Appointment:** An appointment made by the Secretary of State or the Authority for a company to provide water or sewerage services in part of England or Wales. The Instrument of Appointment imposes conditions on the relevant appointed company which Ofwat enforces.

**ISC:** Interim Supply Code.

**Licence Application Notice:** the notice issued by Ofwat under section 17F of the WIA91.

**Licensee:** The holder of a water supply licence and / or sewerage licence.

**MAC:** Market Arrangements Code.

**MEAC:** Market Entry Assurance Certification.

**MOSL:** Market Operator Services Limited is the market operator.

**NRW:** Natural Resources Body for Wales, is a Welsh Government sponsored body, responsible for the management of the natural resources of Wales.

**Ofwat:** The Water Services Regulation Authority.

**REC:** Retail Exit Code.

**Restricted retail authorisation:** An authorisation in the water supply licence that allows the licensee to use the supply system of an appointed water company whose area is wholly or mainly in Wales for the purpose of supplying retail services to eligible premises that use 50 megalitres or more water a year (Schedule 2A WIA91).

**Retail authorisation:** An authorisation in the water supply or sewerage licence that allows the licensee to use the supply system of an appointed water company and the sewerage system of an appointed sewerage company whose area is wholly or mainly in England for the purpose of supplying retail services to eligible premises (Schedules 2A and 2B WIA91).

**Sewerage system:** as defined in section 17BA(7) of the WIA91.

**Scottish licence:** A licence granted by the WICS pursuant to the Water Services etc (Scotland) Act 2005.

**Standard Licence Conditions:** The standard terms and conditions of Water Supply and Sewerage Licences published by the Secretary of State (for Environment, Food and Rural Affairs) pursuant to sections 17H and 17HA of the WIA91.

**Self-supply Licensee:** A holder of a WSSL that provides retail services to its own premises and/or those of its associates (for example, subsidiaries or partners) in the areas of appointed companies wholly or mainly in England.

**Sensitive customer:** Defined in Standard Condition 6 as a vulnerable non-household customer, including any non-household customer for eligible premises occupied by the sick; the elderly; the disabled; or other vulnerable sections of the population; and/or which is a hospital; or a school.

**Supply system:** As defined in section 17B of the WIA91.

**WA14:** Water Act 2014.

**WIA91:** Water Industry Act 1991.

**WICS:** The Water Industry Commission for Scotland.

**WRC:** Wholesale Retail Code.

**WSSL:** Water Supply and Sewerage Licences as defined in the WIA91.

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.

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