

Introduction

Thank you for the opportunity to comment on the consultation document “Change of control – general policy and its application to Thames Water.” United Utilities is responding to the questions raised in relation to Ofwat’s general policy. None of our response should be considered a direct response in the context of the particular change of control proposals for Thames Water.

We do not object in principle to any of the proposals made in the consultation document, including:

- the introduction of notification requirements on change of control into the licence information requirements
- the introduction of an obligation for the licensee to provide Ofwat with information in relation to a change of control or incoming controller
- the introduction of an obligation to require the Appointee to comply with a direction from Ofwat to enforce an Ultimate Controller’s undertaking
- the introduction of consistent licence requirements on ring fencing standards and the Board Leadership, Transparency and Governance principles

In terms of the information that Ofwat might require concerning change of control, then we are supportive of the broad coverage of Appendix 2A. Publication of a standard template as a starting point for the information likely to be required would be a useful starting point and assist companies in collating the required information, so we support the approach being taken in this regard.

We consider that there is a strong case for requiring that all appointees should procure and maintain at least one credit rating and believe that the ring fencing provisions should be strengthened in this regard.

Responses to questions

1) What are your views on the introduction of notification requirements on change of control into the licence information requirements?

We support this change in principle.

2) What are your views on the proposed obligation to provide us with information?

We support this change in principle. It will be important to ensure that any requirement to inform Ofwat in relation to a change of control is not in conflict with other obligations the company must comply with (eg: listings rules, takeover panel.) Furthermore, given the sensitivity of such information, a clear protocol for sharing the information and protecting its confidentiality should be established.

3) What are your views on the information that may be helpful for our assessment of change of control?

We consider that the list provided by Ofwat offers a comprehensive starting point. This list should be published and reviewed from time to time in light of experience.

4) What are your views on the proposed obligation to require the Appointee to comply with any direction from Ofwat to enforce an Ultimate Controller’s undertaking?

We support this change in principle and note that an undertaking already exists between UUW and UUG.

General policy on change of control – UU response

5) What are your views on bringing all the licences up to the same standards, including introducing a requirement to meet the BLTG principles?

We support this change in principle, although we consider that:

- a) the basis on which an appointee can bring an appeal is unclear and should be clarified; and,
- b) continuation of the “apply or explain” principle is appropriate in circumstances where a blunt application of the BLTG principles could lead to unforeseen complications or unintended consequences and where there are appropriate alternative approaches which can uphold the same principles; and,

In respect of the latter point, we consider that Ofwat should apply a strong evidential bar when companies explain an alternative basis for compliance; nugatory explanations should not be seen as a sufficient alternative to compliance with the code.

6) Are there aspects of the most up to date provisions which you think we need to revisit or amend?

We have not identified any aspects of the most up to date provisions which need to be revisited or amended in UU’s case.

7) What are your views on how the ring fencing conditions need to be further strengthened? In particular, in relation to: a. Maintaining an appropriate credit rating and how and when the lock-up conditions are triggered? b. Whether there needs to be a more explicit requirement to inform us of particular events affecting the Appointee? c. Managing potential conflicts of interest where there are cross-shareholdings? d. Safeguarding the autonomy of the Appointee? e. Any other issues?

We believe the requirement to maintain an appropriate credit rating is an important consideration in ensuring the sector maintains the trust and confidence of all stakeholders. We would therefore suggest that there should be a requirement that all appointees should be required to procure and maintain at least one credit rating. This would also ensure that all companies are treated consistently and equally fairly through regulatory mechanisms.

Otherwise, we are not aware of any of the provisions that need to be updated in UUW’s specific case. UU already complies with the ringfencing obligations in terms of maintaining credit ratings, has no minority cross shareholdings and already conducts the business of UUW as – essentially – the sole business and as a publicly listed company on the basis that has previously been explained and approved by Ofwat. In principle, we would be supportive of changes to the requirement to inform Ofwat of material issues, provided any new requirements were suitably clear and transparent so that compliance could be established a priori.