

September 2018

Trust in water

Application guidance for new appointments and variations

About this document

This guidance is designed to assist those applying for new appointments and variations of appointments. The aim of this document is to provide information and guidance that ensures a transparent and efficient process for all parties. For those wanting more detail to decide whether or not to apply for a new appointment or variation, please refer to the information published on [our website](#) and the [application form](#).

Throughout this document, we use the term new appointments to refer to new appointments and variations as appropriate, unless otherwise specified.

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 Background to the NAV market

New appointments and variations (“**NAVs**”) allow companies to offer water, sewerage or water and sewerage services to a specific geographic area instead of the existing incumbent company. As a result, developers and large business¹ customers can choose their supplier for these services and enjoy the benefits of this competitive market.

A **new appointment** occurs when we appoint a company for the first time to be a water or sewerage provider. The appointment is made for a specific geographic area.

A **variation** occurs when we vary the appointment of an existing appointed company.

We publish a register of the new appointments and variations we have granted on our [website](#).

We may grant a new appointment or variation of appointment in cases where:

- an area does not contain any premises that receive services from an appointed water or sewerage company (it is ‘**unserved**’);
- the customer(s) uses (or is likely to use) at its premises at least 50 megalitres of water a year (if the area of the relevant appointee concerned is wholly or mainly in England) or 250 megalitres of water a year (if the area of the relevant appointed company concerned is wholly or mainly in England in Wales) and wants to change their supplier in respect of those premises (a ‘**large user**’); or
- the existing appointed company agrees to transfer part of its area to a different company (by ‘**consent**’).

Section 2 sets out each of these criteria in more detail.

1.2 Structure of this guidance

This document sets out our process for handling and assessing applications for new

¹ Business customers are defined as eligible business, charity and public sector customers.

appointments and variations. It sets out:

- how to apply for NAVs (including the information we require an applicant to provide and the competencies it must demonstrate) (section 3.1);
- how we assess applications we receive (sections 5 and 6);
- an explanation of each stage of the application process (including timescales) (section 3); and
- the interactions usually required between applicants and existing appointees, the Consumer Council for Water (CCWater), the Drinking Water Inspectorate (DWI), Natural Resources Wales (NRW) (as applicable), the Environment Agency (EA) and the Market Operator Services Limited (MOSL) during the application process (section 4.1.2- 4.1.6).

We will keep our policy and process under review and ensure that we take account of changes in wider UK and Welsh Government policy, legislation, and our experience from applications we receive.

This document should be read alongside the following documents:

- [Application Form](#)
- [New appointments and variations – a statement of our policy](#)
- [Assessing the financial viability of applications for new appointments and variations](#)
- [Bulk charges for NAVs: final guidance](#)
- [Information Notice 18/01: Applications for New Appointments and Variations under the “unserved criterion”](#)
- [New Appointment and Variation applications – the terms of reference for independent professional advisers providing site status reports](#)

2. Qualifying criteria for a new appointment

This section sets out the criteria under which we are able to grant a new appointment.

The applicant for appointment must be a limited company and may not be a water supply licensee or a sewerage licensee (see section 6(5) and (5A) of the Water Industry Act 1991 (**‘WIA91’**)).

In addition, the applicant must make sure that the proposed area of appointment (**‘the site’**) meets one or more of the qualifying statutory criteria (see section 7(4) of the WIA91). Its application must set out which of the criteria are being relied on. We cannot grant an application unless one of these criterion apply.

Details of the information that we require for an application submitted under each of these criteria is set out in section 5, and is set out in our [statement of policy](#).

2.1 The unserved criterion

To date, most applications for new appointments have been made under the unserved criterion.

Under section 7(4)(b) read with section 36 of the WIA91 we can grant a NAV under the unserved criterion if none of the premises in the site are:

- supplied with water by means of a connection with a distribution main of the existing appointed water company (in the case of an application to supply water); or
- drained by means of a public sewer or lateral drain of the existing appointing sewerage company (in the case of an application to discharge sewage)².

Anyone submitting an application for a NAV under the unserved criterion should, where appropriate, include a report from an independent professional adviser that verifies the status of the site. But, if the unserved status of a site is not in dispute, it may be sufficient for an applicant to provide us with factual details of the site, accompanied by a signed letter from the existing appointee confirming its view that the site is unserved.

The onus is on the applicant to satisfy us that the unserved criterion has been met. If

² The terms ‘drain’, ‘lateral drain’, ‘sewer’, and ‘public sewer’ are defined in section 219 of the WIA91.

an existing appointee disputes that a site is unserved there is an onus on that existing appointee to provide us with relevant information to substantiate its position. We would expect any company that claimed to serve a site to be able to provide evidence in support of its claim.

We would not consider it reasonable for an existing appointee to stop or slow negotiations with an applicant if there are doubts about the unserved nature of a site.

We consider this issue separately for both water and sewerage services. It is possible that a site may qualify as unserved for one service, but be served for the other.

Further guidance on the unserved criterion can be found in section 5.3.1 and in the following documents:

- [Statement of policy](#)
- [Information Notice 18/01: Applications for New Appointments and Variations under the “unserved criterion”](#)
- [New Appointment and Variation applications – the terms of reference for independent professional advisers providing site status reports](#)

2.2 The large user criterion

Under this criterion, an applicant may apply for a NAV to serve premises that are, or are likely to be, supplied with not less than the following quantity of water in any period of twelve months:

- 50 mega litres (if the area of the relevant existing appointee concerned is wholly or mainly in England megalitres); and
- 250 megalitres (if the area of the relevant existing appointee concerned is wholly or mainly in Wales).

The same threshold levels apply to a NAV for sewerage services, in terms of the volume of water supplied, not the amount of effluent discharged.

The customer concerned must provide consent in writing to the new appointment or variation of appointment.

The onus is on the applicant to demonstrate that the customer(s) on the site do or are likely to use volumes of water at least equal to the relevant threshold. Any evidence of actual usage over time (if it exists), including the consumption profile, will be important for our assessment. If the application is based on likely future consumption,

then the applicant must set out the future expected usage levels and profiles for the relevant customer(s) and provide evidence in support of this. Further guidance on the large user criterion can be found in section 5.3.2.

2.3 The consent criterion

This applies when an existing appointee consents to transfer a specific part of its supply area to another appointee.

The consent criterion gives existing appointees the opportunity to avoid incurring significant costs to serve a site when another company may be able to serve it at lower cost. We will only grant a new appointment under this criterion if consent is unambiguous. The onus is on the applicant to provide evidence of the clear consent of the existing appointee for the new appointment. Further guidance on the consent criterion can be found in section 5.3.3.

3. The NAV application process and timescales

The key stages of the application process and indicative timescales for these are outlined in the table below.

Stage	Indicative timing	Summary of activities involved
Pre-application stage (section 4)	Applicant's discretion	<ul style="list-style-type: none"> Preliminary discussions between the applicant, Ofwat and other key stakeholders³ (EA, NRW, DWI, CCWater and MOSL). Applicant to begin negotiations with existing appointee for bulk supply/discharge agreement (if applicable).
1 – Initial checks (section 3.2)	Up to 5 working days	<ul style="list-style-type: none"> Application submitted to Ofwat. Ofwat undertakes initial checks of the application. Ofwat writes to confirm the application is complete/ incomplete.
2 – Assessment and recommendation to decision maker to consult (section 6.1)	Up to 45 days	<ul style="list-style-type: none"> Applicant serves and publishes application notices on relevant stakeholders. Ofwat undertakes detailed assessment of the application. If the application is for a new appointment, Ofwat consults with the applicant on the draft appointment conditions⁴ that will apply to it. Ofwat receives comments from the EA/NRW, CCWater and DWI. Recommendation to decision maker to consult on our proposal to grant variation of appointment/ new appointment. If agreement from decision maker, Ofwat writes to applicant to confirm consultation.

³ Contact details for the EA can be found [here](#).
 NRW can be contacted at suwwaterresources@cyfoethnaturiolcymru.gov.uk (as applicable).
 Contact details for the DWI can be found [here](#).
 Contact details for CCWater can be found [here](#).
 Contact details for MOSL can be found [here](#) (see section 4.1.6 for further details).

⁴ All appointees are subject to similar conditions of appointment, which govern how they will be regulated. Because we regulate companies in a proportionate way, we have suspended some of these conditions for new appointees. These are suspended until we consider that the scale (or other characteristics) of the new appointee's business warrants their application.

3 – Public consultation	No less than 28 calendar days	<ul style="list-style-type: none"> • Public consultation on the proposal to propose grant variation of appointment/ new appointment. • Applicant to conclude negotiations with existing appointee for bulk supply/discharge terms and provide Ofwat with copies of signed agreements (if applicable). • Ofwat receives confirmation from MOSL that the applicant has completed the Market Entry Assurance process.
4 – Final decision	Up to 15 working days ⁵	<ul style="list-style-type: none"> • Ofwat considers consultation responses. • Ofwat makes a decision to grant/ reject a new appointment/variation.
Total	Up to 85 working days ⁶	<ul style="list-style-type: none"> • New appointment/ variation is granted or rejected by Ofwat. • Ofwat publishes decision document on website and updates register of new appointments and variations. • Ofwat serves notice on relevant parties.

⁵ If no consultation responses are received and there are no outstanding issues, we expect to make a decision within ten working days of the consultation closing.

⁶ From the date Ofwat confirms that the application is complete to the date that the new appointment/variation is granted/rejected.

3.1 Submitting an application

Applications should be emailed to the Case Management Office (casemanagementoffice@ofwat.gsi.gov.uk). Alternatively they can be sent to:

Case Management Office
Ofwat
Centre City Tower
7 Hill Street
Birmingham
B5 4UA

An applicant should provide information in the application that is accurate and not misleading. If any of the information provided should change during the course of the application process, the applicant must notify us as soon as possible. We accept that there may be changes in the nature of an application. If there is a significant change in the characteristics of an application, we will require the applicant to submit a new application for that particular site and the application process will restart.

The onus is on the applicant to tell us and the existing appointee as soon as possible if any information in relation to its application changes so that we can decide if such a change has a material impact on the application and take account of it as appropriate. This could include, for example, if the:

- planning permission granted is different from what was included in the application;
- phasing of the development in question changes;
- terms of bulk agreements change; or
- connections are needed earlier/later than originally stated.

If the applicant provides false or misleading statements, forecasts or assumptions, action may be taken under section 207 of the WIA91 (which makes it a criminal offence to furnish false information in an application) or the decision to grant a new appointment or variation may be revoked. Applicants are required to submit a declaration that the information in the application is accurate (see section 5.2 below).

An applicant must ensure an application is submitted in sufficient time to allow for Ofwat's assessment. An applicant should not expect to have its application prioritised by submitting it close to the date at which services will be needed on the site, nor should the application expect a revised application to be prioritised in the same circumstances. In circumstances where an applicant has several applications being

assessed at the same time, we may discuss with them how to prioritise the applications.

3.2 Initial checking

We will only accept applications that are complete and contain all of the information we require, as set out in this guidance and the application form. We will not commence our assessment process until we have all the required information. We aim to have checked whether an application is complete within five working days of receipt.

As soon as reasonably practicable following our decision that we are satisfied that a complete application has been received, we will provide the applicant with written confirmation of this. Our written confirmation to the applicant signals the start of our assessment process.

3.3 Section 8 (2) notices

The applicant must give notice under section 8(2) of the WIA91 that it has applied for a NAV. The applicant must do this within 14 calendar days of submitting their application to us. This notice must be served on:

- the existing appointee(s) in respect of the relevant site;
- the EA (and the NRW, as applicable);
- the DWI; and
- all local authorities whose areas include any part of the proposed application area.

Applicants must provide us with a copy of the notice served on the parties listed above. Applicants' attention is drawn to section 216 of the WIA91 which sets out how the serving of documents must be carried out (i.e. by posting the document to the registered address of a corporate entity).

In addition to formal service, we request that an applicant publishes the notice on its website. This is to ensure that as many interested parties are made aware of the application as possible.

The applicant must let us know via email once the necessary steps have been taken. The applicant should provide us with a copy of the published notice so that we can publish it on our own website.

3.4 Our assessment of applications

In most cases, we expect the application process to take up to 85 working days in total (from the date that the application is confirmed to be complete to the date that the new appointment/variation is granted/rejected). This is an indicative timescale. This timescale includes the minimum 28 calendar day public consultation period, which is a legal requirement.

The process may take less time in very straightforward cases (for example, if the application is under the consent criterion and there are no household customers on the site). The process may take longer should we require further clarification or information from the applicant or if complex issues arise from our assessment or from representations third parties make during the consultation period.

An applicant can help ensure that the time taken to process its application is within 85 days by:

- being familiar with our policy and process as set out in our published documentation;
- providing clear and high quality information to enable us to conduct our assessment;
- making sure it understands what is required in any requests from us for clarification or further information;
- proactively and promptly providing us with any updated information relevant to its application; and
- providing the EA, NRW and DWI with sufficient information of high quality and clarity.

We will begin assessing an application once we consider that we have a complete application. We have set out indicative timings for each stage of the application process in section 3. Please note these timings may vary for each application.

3.5 Suspending a NAV application

We may suspend the application process under certain circumstances. Examples would be our ability to further progress the application depends on action or provision of information to us by an applicant or where we cannot make progress because of factors beyond our control.

When we suspend an application we will tell the applicant why the application process

has been suspended and what it must do or provide so that we can restart the application process. The onus is on the applicant to complete the required action and/or provide the necessary additional material and we will not continue to consider the application until this is received.

Examples of situations in which we consider it may be appropriate for us to suspend an application include:

- an applicant fails to serve a notice under section 8(2) of the WIA91 on the relevant parties stating that it has applied for a new appointment;
- an applicant needs to take action following representations received by us during the public consultation period;
- we require further information from an applicant in response to comments received during the consultation period;
- an applicant has not given the DWI or the EA/NRW enough information for them to support an application;
- an applicant is considering whether to withdraw its application and tells us this is the case; and
- we need further information or clarification from an applicant in order to proceed with our assessment.

Once the required action has been successfully completed or the required information provided, the application and timetable will resume from the date this is completed. We will inform the applicant in writing and tell them we have resumed the application process. Suspending an 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 NAV. The process for rejecting applications is set out in section 6.4.

4. Pre-application stage

4.1 Discussing the proposal before submitting an application

Early engagement with Ofwat, the EA, DWI, NRW, MOSL and CCWater may reduce the risks of any delays caused during the application process by the bodies requiring further information or clarification on the applicant's plans to operate at the site. Applicants must contact the DWI, EA and NRW (as applicable) at the pre-application stage in order to engage with them before they are formally notified by the Section 8(2) notice.

4.1.1 Ofwat

Before granting any new appointment, we must be satisfied that an applicant fully understands the duties expected of appointed water or sewerage service providers. Therefore, a potential applicant may find it useful to discuss with us the duties and the information we assess before they submit an application to us. Early discussions with Ofwat will enable an applicant to understand our assessment requirements and reduce any requests for further information during the assessment process.

Our [policy statement for new appointments](#) sets out the principles on which we base our assessment of individual applications. An applicant should familiarise itself with these principles before submitting an application. To help avoid any issues, a prospective applicant should contact us as early as possible before submitting its application. We can then discuss whether a meeting at the pre-application stage would be beneficial. This is likely to be the case if an applicant has little experience of new appointments, or where the application is likely to be complex.

With regard to information requests, in accordance with the Freedom of Information Act 2000, the Data Protection Act 1998 and the General Data Protection Regulations, and the Environmental Information Regulations 2004, we may be required to publish or disclose information. If the applicant considers that information it provides to Ofwat should be treated as confidential it should explain to us 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.

4.1.2 Drinking Water Inspectorate

An applicant should contact the DWI if it is applying for a new appointment. Before engaging with the DWI, applicants should read '[Guidance on the regulatory responsibilities associated with inset appointments for public water supplies](#)', which is available on the DWI's [website](#). This guidance provides advice to applicants on the regulatory responsibilities of being a NAV. The DWI can provide further information on the duties of an applicant with regard to providing a safe and clean supply of water.

By engaging with the DWI early in the application process and providing a risk assessment report, applicants will demonstrate to the DWI that they have the competency to supply water through a supply system.

4.1.3 Environment Agency

The EA requires information from applicants in order to consider any issues that may arise from the granting of the application, in particular whether the applicant can provide secure and reliable water supplies and to ensure consistency with the required statutory plans. The EA now offers a pre-application service where any potential issues relating to the site can be explored. By the applicant engaging with the EA early it will mitigate the risk of any delays occurring during the processing of the application.

During the pre-application stage, an applicant must submit a summary of its application to the EA via the nominated RBMS_WR_Permitting@environment-agency.gov.uk email account (section E3 of the application form). The summary should include:

- name, location and brief description of the site;
- the number of household and business properties on the site including details of property proportions, both existing and planned;
- details of the status of the planning permission for the site and the phasing of development showing how water supply, flood water management and sewerage provision will be addressed;
- forecast annual household and business consumption;
- whether providing water, sewerage or both services;
- details of existing appointee(s) for water and sewerage services;
- whether bulk services or own resources will be used to serve customers;

- where the applicant intends to use a bulk supply, details of the volumetric and contractual arrangements in place to supply this water;
- where the applicant intends to use its own resources, details of these, including any abstraction or discharge permits;
- the applicant's plans for producing a statutory water resources management and drought plan and how these will be updated between planning cycles (further details below);
- details of sewerage arrangements and sewerage system maintenance (where the applicant is proposing to provide sewage treatment facilities the Environment Agency will need further details);
- any water quality sensitivities or known problems with existing sewerage capacity;
- proposals for surface water drainage and assessment of flood risk;
- arrangements for dealing with incidents and emergencies;
- details of any innovative or water efficiency measures proposed at the site. This may include sustainable drainage systems or grey-water recycling; and
- details of household metering implementation, water efficiency and leakage management measures and plans for the site that should align with government objectives.

The applicant should also consider providing:

- a water interest survey that identifies key and assesses any risks;
- an assessment of the overall condition of the infrastructure as well as the capacity to accommodate the additional flows from any development; and
- commentary about the best options for water supply, sewerage and flood water management where these issues have not been resolved via the planning process.

An applicant must contact the EA if it needs a permit to abstract and/or discharge water/wastewater at the site it has applied for. Outline terms for these permits should be agreed with the EA before the application is made.

Applicants should be aware of the statutory requirements of appointees to produce and regularly review statutory water resources management plans and drought plans. Effective water resource planning is essential to ensure the long-term balance between supply and demand is maintained. Statutory water resources management plans (WRMPs) are required to be produced every 5 years and should set out a company's intended approach to manage supply and demand for at least the next 25 years. Water companies must also review their WRMPs annually. Further information on water resources planning can be found [here](#). The EA's WRMP guideline is available upon request through water-company-plan@environment-agency.gov.uk.

Water company drought plans are also required to be produced every 5 years and should set out a company's intended approach to managing their supplies and demand in a range of droughts. The EA's drought planning guideline is available [here](#).

The EA also has an interest in the applicant's approach to surface water drainage, flood risk management, incident management, as well as any proposals the applicant has in relation to water efficiency at the site. It will also need to be satisfied that the applicant has access to water supply and sewerage disposal.

4.1.4 Natural Resources Wales

NRW is a Welsh Government sponsored body, responsible for the management of the natural resources of Wales. An applicant should contact NRW during the pre-application stage if it is applying for a new appointment or variation that is located wholly or mainly in Wales (section E3 of the application form). Applicants should submit a summary of its application to the NRW which includes the information requested by the EA in 4.1.3.

Applicants applying for a site that is located wholly or mainly in Wales should ensure they are aware of the different legislation in Wales applicable to them (including the Environment Wales Act).

4.1.5 CCWater

The CCWater is the statutory consumer body for the water industry in England and Wales. An applicant should contact CCWater if it is applying for a new appointment to discuss the proposed customer service levels and customer codes of practice (section E4 of the application form).

CCWater can give an applicant further information as to how new appointees are expected to serve its customers (see section 4.3).

4.1.6 MOSL

MOSL is the market operator of the business retail water market, which opened on 1 April 2017. MOSL's role as market operator is to provide infrastructure, information

and governance services to enable customers to switch retailer and for settlement to take place between wholesalers and retailers.

In order to enter the market, a new appointee will need to make a trading application to MOSL, complete Market Entry Assurance Certification (MEAC) and satisfy the trading conditions. MOSL's [website](#) provides further information on this process. 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. NAVs are integrated businesses providing wholesale and retail services, unless they [exit the business retail market](#), and therefore are required to liaise with MOSL in terms of planned / future business customers.

Certification with MOSL will give new appointees access to the Central Market Operating System (CMOS), which is the core IT system that manages all the electronic transfers involving customer switches and provides usage and settlement data which is used for billing.

For variations, NAVs should consider whether it is making material changes to its capability or the way it upholds its market obligations with the additional variation that it is applying for. If material changes are being considered, it should consult the MOSL [website](#) for further guidance on the re-assurance process. Market re-assurance is the process in which NAVs who are undergoing material changes in capability provide assurance to MOSL that these changes do not impact its ability to uphold the market obligations.

4.2 Existing appointees

Sections 4.2.1 to 4.2.6 describe the interactions that take place between applicants and existing appointees to allow the former to complete and submit an application for a NAV. The sections suggest timescales within which we consider it reasonable to expect existing appointees to respond to requests from applicants.

We expect applicants and existing appointees to agree commercial terms in a timely, professional and constructive way. Existing appointees must not delay their negotiations with applicants for NAVs (for example, because of their views on the unserved nature of a site). Given their unique position in the market as a monopoly provider and the information base that this provides, we expect appointees to negotiate in good faith and to comply with all of their obligations and duties, including those arising from competition law.

If existing appointees do not provide the information that applicants need to progress their applications within timescales that we consider to be reasonable, we will request the information from the existing appointees ourselves.

4.2.1 Bulk supply or discharge negotiations

New appointees take on two broad forms:

- **Full-service NAV** – A NAV that provides a complete end-to-end service on a site. For water, this incorporates obtaining a water source, treatment, distribution and retailing. For wastewater, this incorporates collection, treatment and sludge treatment and disposal. Applications intending to provide a full service for a site should provide details of their plans for the site in question A5 of the application form (e.g. any assets that are to be used to provide services, including who is responsible for and owns those assets, and any other uses to which they are put).
- **Bulk supply NAV** – A NAV can provide its own onsite infrastructure, but rely on a bulk supply of water, or bulk discharge of wastewater, from or to the relevant incumbent's network. The NAV still serves end-customers, but the NAV pays the incumbent for bulk services.

Some NAVs may use a bulk supply for one service (e.g. wastewater) but have their own resources for the other.

Any new appointee that lacks its own water source or sewage treatment works may need to enter into a bulk supply or bulk discharge agreement with the relevant incumbent for these services ('**bulk supply/discharge**') in order to enable it to supply its customers.

Before submitting an application to Ofwat, applicants should begin negotiations with the existing appointee if it needs bulk supply and/or bulk discharge services. The incumbent water company should include the payment of the 'income offset' as part of their bulk agreements from 1 April 2018 to 31 March 2020. From 1 April 2020, the requirement will be to net-off the 'income offset' from the infrastructure charge rather than against the requisition charge. From April 2020, NAVs will only be required pass back the 'net infrastructure charge' to the incumbent water company. Further guidance on this can be found in the [Bulk charges for NAVs: final guidance](#) and in more detail [here](#).

The applicant will need to provide further information in section A4 of the

application form and ensure the agreement is in place ahead of our final decision as to whether to grant the appointment.

The amount the applicant pays for these bulk supplies services is likely to be a significant proportion of its costs of supplying the site. So, it is important that we know the price that the applicant will – or expects to – pay. We may use a reasonable estimate of a price in assessing an application in cases where the costs have not been agreed (or determined). Applicants must keep us informed of progress with bulk services negotiations during our assessment of their application.

Further guidance on bulk supply agreements can be found in the following guidance:

- [Bulk supply pricing – a statement of our policy principles](#) (February 2011)
- [Negotiating bulk supplies – a framework](#) (August 2013)
- [Bulk supply agreements page on our website](#)

Our current guidance on bulk supply charges is [Bulk charges for NAVs: final guidance](#) (May 2018). In relation to bulk supply charges, this guidance replaces any guidance in prior documents related to bulk supply.

4.2.2 Determination of bulk supply and discharge terms and prices

Under sections 40, 40A and 110A of the WIA91, we can make a determination if the applicant and the existing appointee cannot agree the terms of an agreement (or become unhappy with terms that have already been agreed). We cannot do this unless we are satisfied that the existing appointee and the applicant have failed to agree terms, and unless we have been asked to do so.

Before considering whether we will determine terms, we will ask the party that has requested the determination to provide information and evidence demonstrating how it has attempted to reach agreement and the reasons for the failure to do so. We will not begin a determination until we have received a clear statement of the terms they seek and why they consider those terms to be reasonable in the circumstances.

Where we decide to make a determination, we will consider the circumstances of the case in the light of our bulk pricing guidance. Further detail can be found in the published documents listed in 4.2.1.

If we decide to make a determination, we will carry out the necessary work to reach our conclusion while continuing with our assessment of the application. But there may be cases in which it is necessary for us to suspend our assessment of an application

until we have made our determination.

4.2.3 Unserved status of sites

If an independent adviser is required to complete a site status report, it will need to contact the existing appointee to check whether it owns any water, foul sewerage and surface water drainage assets on the site. Applicants should provide the adviser with a letter of authority, so that the existing appointees can share this information. The existing appointee should respond to the adviser's request within 15 working days.

If the existing appointee disputes the unserved status of a site, it must explain fully why it considers the site to be served and provide evidence as appropriate. It must also seek to understand the applicant's view that the site is not served. We expect the existing appointee to continue timely and constructive bulk supply negotiations with the applicant. We will not accept an appointee's doubts about the unserved nature of a site as a valid reason for refusal to negotiate. Ultimately, the decision whether to grant an application made under the unserved criterion rests with Ofwat.

4.2.4 Network information

If an applicant requires a bulk supply of water and/or a connection to a company's assets for discharge purposes, it should contact the existing appointee for the site to obtain:

- details of the point (or multiple points) of connection (POC) for the provision of water and/or sewerage services;
- the cost of providing POCs;
- the design and cost of any network reinforcement required;
- the minimum and maximum water pressures available to the site; and
- a formal offer of price and non-price terms for a bulk supply/discharge agreement.

We consider it reasonable to expect existing appointees to pass on this information to applicants within 20 working days of receiving the initial request.

If existing appointees believe the work needed to meet the network information timeframe will exceed 20 days, they must inform us and the applicant as early in the process as is possible with reasons for believing the 20 day timeframe may not be met.

In return, the applicant should provide the existing appointee with:

- accurate site location and boundary details; and
- known or forecast demand and/or discharge rates.

4.2.5 Risk assessments

To enable the applicant to submit a satisfactory risk assessment to the DWI, it will need information from the existing appointee on, among other things, its drinking water safety plans. This is a requirement under the [Water Supply \(Water Quality\) Regulations](#). We will not grant an application until the DWI has received a satisfactory risk assessment.

We consider it reasonable to expect existing appointees to return the requested risk assessment information to applicants within 15 working days of receiving an information request from an applicant.

4.2.6 Infrastructure standards

Existing appointees may need information from an applicant about the infrastructure that has been laid at its site. This is to assess if it meets the required standards if the existing appointee is required to adopt the infrastructure. As an example, the information required may include:

- any environmental and engineering assessments that have been carried out; and
- evidence that the pipeline material, design and construction complies with all relevant statutory and industry standards.

Some existing appointees have raised concerns that the standard of infrastructure at new appointees' sites does not meet the required standards. We consider that, in general, it would be unreasonable for existing appointees not to take over responsibility for infrastructure that had been laid in accordance with standards for the water and sewerage sectors.

4.3 Customer engagement

There may be instances where an application is submitted to supply a site at which there are already customers. For example, there may be customers on a site that receives a private supply, the application could be for a large user with an existing supply; or an incumbent company may consent to the transfer of existing customers to a new appointee.

If customers already occupy the site, the applicant must notify these customers of their potential change in supplier during the application stage. The applicant must take whatever steps it considers appropriate to do this. This could involve:

- placing an advertisement in a local paper/website;
- holding residents' association or community meetings; and/or
- writing individually to those customers who may be affected.

If customers are already receiving a service, applicants must put in place measures to ensure that there is no disruption to those customers when their supplier changes, should we decide to grant a new appointment to serve the site. We will not grant an application where there are existing customers unless we are satisfied that the applicant has put appropriate transitional arrangements in place (please provide information in sections B13 and B14 of the application form).

It is essential that customers' interests are protected and they are kept informed about any proposed changes to the provision of their water and/or sewerage services. They should receive clear information appropriate to their needs and be told who they can contact to discuss any queries.

The need to communicate clearly also applies to customers who may be moving to a new build site and who may not be aware that they are to have a new service provider. As far as possible, applicants should identify and communicate with their prospective customers. We expect to receive evidence of how the applicant has and proposes to do this as part of its application.

One way of doing this is for the applicant to meet CCWater before submitting an application, to discuss the best way to communicate with customers. Effective communication with customers may entail us conducting an extended public consultation (that is, longer than the legally required 28 calendar days) and/or through public meetings. The applicant and existing appointee must also communicate with each other effectively to ensure that the customers experience a seamless transfer.

4.4 Independent confirmation of site status

An applicant wishing to submit an application under the unserved criterion may need to commission an independent report which provides an assessment of the status of the site. The adviser producing the report should ensure that the report submitted conforms to our [terms of reference for site assessment reports](#). Further information

on the unserved criterion can be found in section 5.3.1.

5. The application form and supporting information

This section outlines the information and supporting documentation that needs to be submitted to Ofwat when making an application for a new appointment or variation of appointment and details of how we will assess this. Each application will be considered on its own merits. The applicant's supporting information is key our assessment of the application which we consider according to the principles set out in our [policy statement](#).

5.1 Application form

We have an [application form](#) that must be completed for each new appointment or variation of appointment. This form lists the questions we require applicants to answer for all applications and includes a checklist detailing the supporting information applicants will need to submit. More detail on the supporting information needed is set out below in sections 5.2 to 5.9.

Our information requirements may differ for applications for new appointments and applications for a variation of an appointment where information may have already been provided to us with a previous application. Details of this can be found in the following sections and application form.

Applicants that have not yet been granted a new appointment and are submitting multiple applications should treat each application as an application for a new appointment. Applicants should contact Ofwat during the pre-application stage if they would like further information on this.

5.2 Declaration of accuracy

We require a declaration of accuracy to be submitted with each application. The declaration confirms that the information provided as part of the application is correct. It also confirms that the applicant will advise Ofwat of any material changes in the information provided as part of the application whilst it is being considered. The declaration of accuracy should be amended as necessary to reflect whether a new Charges scheme statement of assurance is required (see section 5.5.3 for further information). If the previously submitted statement of assurance remains correct, applicants should confirm this in the declaration of accuracy. If the statement of assurance requires updating, we require applicants to send us a statement of assurance with the application ([Supporting Document 11](#)).

5.3 Qualifying criteria supporting information

If the applicant considers that the site it has applied to serve may qualify under more than one of the qualifying criteria, it should make clear in its application under which criteria it is applying and should include information on which other criteria may apply and why. Further information on the criteria can be found in section 2.

In sections 5.3.1- 5.3.3 below we set out some examples of supporting information that may be useful in demonstrating compliance with the different criteria.

5.3.1 Unserved criterion

When submitting a NAV application to us under the unserved criterion, applicants should ensure that they have provided sufficient evidence to demonstrate that the proposed appointment area is currently unserved. The onus is on the applicant to demonstrate that the site meets the unserved criterion.

The information the applicant submits to us should include factual information about the site. We have issued an [Information Notice](#) relating to applications for NAVs under the unserved criterion. This Information Notice details the evidence applicants are required to provide when applying under this criterion. Our information requirements vary depending on the nature of the site for example, whether the site is greenfield (undeveloped) or brownfield (a site which has previously been developed).

Once we have received an application under the unserved criterion, we share the relevant reports on the site's status with the existing appointee(s) unless this has already been done by the applicant. If it has, the applicant must also provide us with any comments received on this from the incumbent. Depending on the existing appointee's response, we may need to seek further information from the applicant.

5.3.2 Large user criterion

In order for a site to qualify under the large user criterion, an applicant must provide us with a letter of consent from the customer at the site endorsing the application.

An applicant should provide the following supporting information:

- Where it exists, evidence of actual yearly consumption over the previous five years, including the consumption profile (for example, copies of previous bills).
- Where evidence of actual consumption does not exist or is not relevant to future expected consumption, the applicant must set out the future expected consumption levels and profiles for the relevant customers and provide evidence in support of this.

5.3.3 Consent criterion

In order to demonstrate compliance with the consent criterion, an applicant should provide the following supporting documents:

- a letter of consent from the existing appointee consenting to the application and to the variation of its area of appointment corresponding to the applicant's application; and
- details of why the variation should be granted.

5.4 Maps

The application must include colour maps that show the site boundary clearly and accurately. The map should be A3 (or larger) in size. The map should show the location surrounding the site clearly showing nearby towns and villages and include road names. The maps must include the exact wording below in a box on the map:

Water supply boundary map (variation):

PLAN REFERRED TO IN THE VARIATION OF THE APPOINTMENTS OF [*insert applicant's company name in full*] AND [*insert existing appointee's company name in full*], AS WATER UNDERTAKERS, MADE BY THE WATER SERVICES REGULATION AUTHORITY ON

Sewerage services boundary map (variation):

PLAN REFERRED TO IN THE VARIATION OF THE APPOINTMENTS OF [*insert applicant's company name in full*] AND [*insert existing appointee's company name in full*], AS SEWERAGE UNDERTAKERS, MADE BY THE WATER SERVICES REGULATION AUTHORITY ON

Water supply boundary map (new appointment):

PLAN REFERRED TO IN THE APPOINTMENT OF *[insert applicant's name]* AND THE VARIATION OF THE APPOINTMENT OF *[insert existing appointee's name]*, AS WATER UNDERTAKERS, MADE BY THE WATER SERVICES REGULATION AUTHORITY ON

Sewerage services boundary map (new appointment):

PLAN REFERRED TO IN THE APPOINTMENT OF *[insert applicant's name]* AND THE VARIATION OF THE APPOINTMENT OF *[insert existing appointee's name]*, AS SEWERAGE UNDERTAKERS, MADE BY THE WATER SERVICES REGULATION AUTHORITY ON

5.5 Making sure customers are no worse off

We assess both the proposed price and the levels of service that applicants plan to offer their customers. We then decide if the application offers a standard that ensures that the applicant's customers will be no worse off than they would have been receiving their supplies from the existing appointee. As part of our assessment, we also assess the impact granting a new appointment has on the bills of an existing appointee's customers.

As part of their applications, applicants must provide evidence that customers of the proposed area of appointment will be no worse off than if they had been supplied by the existing appointee. Details of the information required to do this are set out in sections 5.5.1 – 5.5.4.

If the information intended to be submitted in sections 5.5.1 – 5.5.4 is unchanged from previous applications the applicant has made and is in the same existing appointee area then the applicant is not required to submit this information again. For example, if the applicant has provided a performance commitment and ODI statement with a previous application in the same existing appointee area and there have been no changes to that statement and the service will remain the same for customers on the new site, we do not require applicants to resubmit their ODI and performance commitment table.

Applicants should complete question D3 of the application form in order to confirm any information that had previously been provided and remains unchanged.

5.5.1 Customer service standards and service levels

In line with our 'no worse off' principle, we must be satisfied that customers on the site will benefit from service level offerings that are at least as good as those that the existing appointee provides.

Applicants must demonstrate that they understand their legal obligation to meet the minimum customer service standards set out in the GSS regulations. We assess how applicants propose to deliver each standard and to monitor compliance.

For any non-statutory standards and customer service policies, applicants should check the existing appointee's codes of practice, customer charter and other customer literature for information on the existing appointee's standards and policies. The applicant must demonstrate that its planned company standards and policies are as least as good as that of the existing appointee. We will check to make sure this is the case.

5.5.2 Codes of practice

Every appointee is required to have codes of practice for:

- Household customers;
- debt; and
- leakage.

These codes must be in place before we grant a NAV (Supporting Document 3). As part of our assessment, we compare the applicant's codes of practice with those of the existing appointee. In doing this, we check whether:

- each code includes all the necessary information;
- the applicant's policies and standards set out within these codes comply with legal and licence requirements;
- each code satisfies our 'no worse off' principle; and
- the codes are consistent with the rest of the information submitted (for example, the applicant's charges schemes).

Examples of policies we look at when assessing codes of practice and when comparing these with the existing appointee's policies include:

- level of assistance offered for supply pipe repairs;

- response times (for example, for sewer flooding or water quality incidents);
- level of payment and other enhancements to the GSS;
- range of bill payment options;
- services for special assistance customers;
- contact options;
- complaint procedures;
- opening hours; and
- help for customers in debt (for example, charitable trusts).

Further information that may help applicants comply with our requirements relating to codes of practice are available on our [website](#).

As part of our assessment process, we share the applicant's proposed codes of practice with CCWater and ask for its views on these during our assessment of the application.

Accompanying each code of practice must be a comparison, in table form, of how the policies and standards within each code match or exceed those provided by the existing appointee (see [supporting document 4](#) for a template). This information is assessed as to whether customers will be no worse off. Any areas where policies may differ (particularly where services offered could be seen to be lower than those of the relevant appointee, for example, fewer payment options or more limited leakage detection/repair schemes) should be highlighted clearly and an explanation provided to justify the differences.

Applicants should provide the following supporting documents:

- Code of practice for household customers (this does not necessarily have to be in the form of a single document – some companies choose instead to produce a series of leaflets that collectively form their customer code. In this case, we would ask that applicants state clearly which documents they wish us to consider as part of our assessment);
- Code of practice on debt; and
- Code of practice on leakage (where the application is for water supply).

This information should be reviewed for and provided with each new variation application, to ensure processes remain appropriate for the increased number of customers. If the information remains unchanged, applicants should complete question D3 of the application form in order to confirm this.

5.5.3 Charges schemes

Before granting a new appointment, we need to understand what an applicant proposes to charge customers on the site. This information should be contained within the applicant's charges scheme. Before making a charges scheme the applicant must send a copy of its draft scheme to CCWater.

We compare the charges the applicant proposes with the equivalent charges that customers would have paid to the existing appointee (information regarding proposed charges should be summarised in section C1 of the application form). If the applicant has stated that it proposes to offer a discount on the existing appointee's charges, we check if this is the case by assessing the financial spreadsheet.

We check that the policies that are contained within the applicant's charges scheme are at least as good for customers as those of the existing appointee (for example, rebates offered or how frequently meters are read). We also check that any policies contained within an applicant's proposed charges scheme are relevant to the particular site. For example, applicants should not include details of trade effluent charges if they do not provide this service.

We will check each applicant's charges scheme for consistency with the rest of the information that it submits as part of its application.

We do not need to have approved an applicant's charges scheme before consulting on a proposal to grant its application. But in order to consult, we must be confident that we could approve the applicant's charges scheme before we grant the application. It will then come into effect from the date a new appointment is granted.

As part of the application process, we require applicants to confirm in their declaration of accuracy (see section 5.2) that the previously submitted statement of assurance remains accurate. If the statement of assurance requires updating, we require applicants to send us a statement of assurance with the application (Supporting Document 11). This statement should be signed by an authorised signatory of the company's Board.

The [Charges Scheme Rules](#) and further information on charges schemes can be found [on our website](#).

5.5.4 CCWater principles

We consider CCWater's views on an application when we carry out our assessment. CCWater has developed a set of principles that we consider for every application for a new appointment and variation.

CCWater has asked us to verify that:

- all of Ofwat's application requirements have been met;
- the applicant can demonstrate that it will provide services and prices to customers that meet, and ideally better those of the current water company;
- the applicant can demonstrate robust and workable code of practices, including a procedure for satisfactorily resolving complaints, which is in line with what is expected of other water companies;
- the applicant can demonstrate how it will communicate with customers and make them aware of how they can contact the company;
- the applicant can demonstrate how they will identify and protect vulnerable customers; and
- the applicant, once it starts supplying customers, will commit to regular liaison with CCWater to ensure best practice in customer service delivery and issues that are specific to the Site.

We check the extent to which these principles have been met as part of our assessment.

5.5.5 Minimum service standards

Applicants should provide details of how it will deliver each of the standards set out in the guaranteed standards scheme (GSS) regulations (further information can be found on our [website](#)), including an explanation of the processes that will be in place to meet the GSS regulations. The applicant should provide details of any standards and payment levels it will offer above the minimum required in the GSS regulations, and how each of these compare with those provided by the existing appointee.

This should be reviewed for and provided with each new variation application, to ensure the processes remain appropriate for the increased number of customers. If the applicant already serves customers on other sites, it may wish to explain this in reference to how it currently delivers these standards on those other sites.

5.5.6 Proposed customer service levels

When granting a new appointment, we must be satisfied that the experience of the new appointee's customers will be as good as or better than the experience of customers of the existing appointee. We acknowledge that applicants with small existing customer bases will be unable to demonstrate performance against the qualitative measures because of insufficient sample sizes. But we must be satisfied that appropriate systems and processes are in place to deliver the customer service proposed. We may ask for and take account of information that can reasonably be provided about an applicant's actual performance.

The Service Incentive Mechanism (SIM) is a regulatory incentive mechanism designed to encourage existing appointees to improve the quality of customer service that they provide. From 2020 onwards, SIM will be replaced by an incentive mechanism called the Customer Measure of Experience (C-MeX). Further information on SIM can be found on our [website](#).

To allow us to assess whether customers are no worse off, the applicant must provide us with a description of the levels of service proposed for each key performance indicator (KPI) and SIM or C-MeX (depending on the mechanism in place at the period of assessment), including how they will be delivered. This should include, for example:

- an explanation of processes and systems that the company has in place to meet the levels of service for each indicator;
- details of any systems in place to handle customer complaints, and for billing and revenue collection;
- information on processes to handle emergency operations; and
- past performance data on other sites, where available, if the applicant is an existing appointee.

5.5.7 Performance commitments and outcome delivery incentives

A price review is when water companies engage with their customers to create plans for the future that will deliver customers' wants and needs. Our role in a price review is to:

- set the framework and methodology;
- check and challenge the plans; and
- set out our decisions on the five year price, service and incentive package for each company.

As part of a [price review](#), Ofwat requires appointed companies to propose targets ('performance commitments') for delivering the levels of service ('outcomes') that their customers expect, following consultation with their customers. Appointed companies also have associated financial and reputational incentives for delivering those outcomes ("ODIs"), usually in the form of outperformance payments and penalties, for their agreed performance commitments when they outperform or underperform them respectively. These are published on [our website](#).

To ensure that customers served by new appointees will remain no worse off, applicants must provide us with a statement that sets out how they will match, or better, the performance commitments and ODIs of the relevant appointed company where applicable. It is necessary for the applicant to consider the outperformance payment or penalty and how customers will benefit or be worse off if served by the applicant. Applicants should provide the statement in table form. [Supporting document 7](#) provides a template in which applicants should provide us with their comparisons.

When a performance commitment from the applicant is worse than that of the appointed company, Ofwat will exercise its judgement to consider whether, taken overall, customers on the site will be worse off or no worse off in terms of the proposed performance of the applicant as compared to the relevant appointed company.

5.6 Financial viability

In sections 5.6.1 - 5.6.3 we set out the information that we require applicants to provide, to allow us to carry out our assessment of financial viability. The level of information is dependent on the type of application (new appointment/ variation) and the number of previous applications we have received and granted from the applicant.

We will not grant a new appointment unless we are satisfied that the new appointee has demonstrated it will be financially viable. Under section 2(2)(b) of the WIA91, we have a legal duty to ensure that efficient companies can finance their functions. So, before we grant an appointment, we need to be satisfied that the appointee will have continued access to sufficient financial resources to fulfil its duties and obligations. We consider the availability of external finance, finance provided by the applicant's group and any financial security or guarantees that may be in place to protect the applicant's customers if it is granted a new appointment. [Our policy statement](#) sets out the principles we will apply when assessing financial viability.

We assess the financial viability risk associated with a proposal to supply a site, by looking at the company as a whole and by looking at each site in its own right. We consider the specific details of each application and the underlying business model of the applicant.

We do not define minimum levels of return (for example a certain profit margin). To do so, would have the effect of creating a 'hurdle' rate. This would not give a true indication of the financial viability of the proposal, as this would also depend on the:

- assumptions underlying the calculation;
- specific proposal put forward; and
- business model that the applicant has chosen.

It is for the applicant to decide what assumptions the application is most sensitive to and to demonstrate the variables that they have considered and the resulting impact on the financial projections. When assessing the financial viability of a particular application, we consider:

- the robustness of any underlying assumptions used in calculations (such as bad debt, leakage, eligibility for vulnerable customer tariffs, occupancy, and average consumption);
- the existence of a customer discount on the charges of the existing appointee;
- the profit margin achieved;
- the cash position of the applicant and the sources of finance available to it;
- the robustness of the applicant's balance sheet;
- the level of an applicant's financial security;
- the ability of the applicant to remunerate providers of finance; and
- how sensitive the applicant's proposal is to any risks described (for example, the risk of under-occupancy or retail switchers), including how the applicant proposes to handle those risks.

The financial projections must be based on realistic estimates of revenues and costs. We assess whether the applicant's financial projections and the assumptions underpinning them are consistent with the rest of the application. We will also consider other information available to us, such as average levels of leakage, operating costs or consumption, when we assess the robustness of the applicant's financial assumptions.

Sections 5.6.1 – 5.6.3 provides guidance on sites that are expected to be predominantly made up of household properties. If a significant percentage of the expected turnover for the site is from business properties, applicants should include the following:

- information on the type of connections and the expected consumption; and
- details on the assumed rate of customers that may switch retailer.

5.6.1 Application for a new appointment

An applicant applying for a new appointment must provide the following information to demonstrate financial viability:

- A comprehensive explanation of the applicant's future business strategy (section D1 of the application form). This should cover expected future growth, nature of any targeted acquisitions, details of company structure and use of associated or group companies. It should also cover the principal risks faced by the applicant and consideration of how these risks could be mitigated.
- A comprehensive explanation of the applicant's business model and approach to providing water and/or sewerage services in general and to the particular site (section D2 of the application form). This should detail what activities the applicant is intending to carry out itself and if any activities will be outsourced with an explanation of the current position regarding procurement etc.
- Evidence to demonstrate that the applicant has sufficient financial resources to meet its obligations as an appointee;
- Evidence that the applicant satisfies our financial security requirements set out in our policy, such as a Parent Company Guarantee (PCG), loan facility or bond. In general, the minimum level of financial security required is calculated using the following formula.

One year's annual operating costs required to supply the number of connections the business is projected to have in two years' time (as included in granted applications and current applications) = minimum level of financial security.

- Evidence to show how any initial capital investment (both business start-up costs and site specific investment) is to be financed including what assets are being financed by this capital investment, the amounts involved, the level of developer contribution and the sources of finance, including the expected cost.
- A completed financial spreadsheet (containing a profit and loss statement, balance sheet and cash flow statement) and related supporting information to demonstrate that the site is financially viable.

The financial projections provided as part the application must be based on central estimates of revenues and costs (base case) and must cover all years until the site is expected to be fully developed.

Applications must include commentary detailing the source of the inputs to any spreadsheet models provided. The financial projections and the assumptions made must be consistent with the rest of the application. All assumptions underpinning all inputs and calculations should be fully explained, documented and supported.

For example, as a minimum, the applicant must explain, how the expected costs and revenues have been calculated with reference to:

- how revenue from customers has been calculated including the number and type of connections, tariff information, consumption and specific assumptions relating to social tariffs.
- the calculation of the bulk supply/discharge from the existing appointee (with links to published tariffs or source data) or details of how the costs of operating the applicants own supply or discharge have been calculated.
- how retail costs have been forecasted.
- Sensitivity analysis of the base case. An applicant should consider and identify those variables to which its application is most sensitive. The sensitivity analysis should demonstrate the effect that changes in these variables would have on the financial position of the proposal. (Variables should be appropriate to the site in question but could include, the eligibility for large user tariffs, consumption levels, under-occupancy, bad debt, potential loss of business retail customers and expected take up of any social tariffs. If there is expected to be a take up of Water Sure on the site, the applicant should include the percentage of properties forecast to be eligible for the tariff and expected consumption for these properties.)
- An assessment of the financial risks faced by the proposal (this should be linked to the sensitivity analysis). This should include an explanation on how the applicant would deal with those risks.

5.6.2 Applications for variations

An applicant is not required to submit the same level of information when applying for variations to its existing appointment. The onus is on the applicant to identify and highlight any areas where its approach or assumptions have changed from its previous application. An applicant applying for a variation should provide the following information:

- Confirmation that its approach to providing water and/or sewerage services to the new site will be consistent with its general approach that we are already familiar with or provide details of what is different. The applicant should highlight any different or unique characteristics of the site.

- Confirmation that the previous financial security arrangements remain in place and there is sufficient headroom to cover the proposed site.
- Confirmation of the level of capital investment required for the site and how this is being funded.
- A completed financial spreadsheet (containing a profit and loss statement, balance sheet and cash flow statement) demonstrating the site's financial viability. The applicant should provide either, confirmation that the source and the assumptions underpinning the inputs and calculations are consistent with its previously granted application and remain appropriate or, if they have changed, they should be fully explained, documented and supported.
- Sensitivity analysis of the base case. An applicant should consider and identify those variables to which its application is most sensitive. The sensitivity analysis should demonstrate the effect that changes in these variables would have on the financial position of the proposal. (Variables should be appropriate to the site in question but could include, the eligibility for large user tariffs, consumption levels, under-occupancy, bad debt, potential loss of business customers and expected take up of any social tariffs. If there is expected to be a take up of Water Sure on the site, the applicant should include the percentage of properties forecast to be eligible for the tariff and expected consumption for these properties.)

We will also consider a financial submission that covers a number of sites for which the applicant is applying. This could save both us and the applicant time, compared to preparing and assessing several applications at once. In some circumstances the applicant may find it easier to demonstrate the financial viability of a number of sites cumulatively.

5.6.3 Well-established applicant – Company-based assessment

We will assess applications using a company-based assessment instead of a detailed site by site approach when it is appropriate for us to do so in line with our [policy](#). If an applicant would like to be considered for a company-based assessment, we will carry out a risk assessment, to determine if an applicant can demonstrate they are sufficiently low risk to be considered for this approach.

In order for us to complete our risk assessment the applicant is required to demonstrate the financial viability of the existing regulated water business as a whole and we will require the following information:

- narrative around the profitability of the company with analysis breaking down the costs and revenues for context;

- the applicant's expected financial results for the current financial year and following two years based on the expected growth in connections expected from the existing granted applications; and
- any further information the applicant are able to provide to support the company-based assessment of financial viability.

We will also consider the financial position of any parent company and the availability and level of the financial security. If an applicant passes our risk assessment we would require with each future application:

- confirmation that the applicant's approach to providing water and/or sewerage services to the site is consistent with its general approach that we are already familiar with or provide details of what is different;
- the applicant should highlight any different or unique characteristics of the site;
- confirmation that the previous financial security arrangements remain in place and there is sufficient headroom to cover the proposed site;
- confirmation of the level of capital investment required for the site and how this is being funded; and
- a completed financial spreadsheet (containing a profit and loss statement) demonstrating the site's financial viability.

In certain circumstances, we will still carry out a detailed assessment of the financial viability of a specific site if we consider that there are material risks to customers.

5.7 Operational viability

An applicant for a new appointment must demonstrate to us and the DWI, and Environment Agency or Natural Resources Wales, that it will be technically and operationally able to fulfil the functions of a water and/or sewerage company. This includes being able to exercise the duties imposed on all appointed water and sewerage companies under the WIA91. The applicant must demonstrate that it is capable of providing water and sewerage services to an acceptable standard as this is an important part of our decision whether to grant a new appointment.

Section 5.7.1 explains how we will assess this for applications for a new appointment and 5.7.2 sets out how we assess this for applicants applying for a variation. This information should be submitted as part of the application's supporting information.

We have not set prescriptive criteria for our assessment of operational viability as the relevant criteria will vary from application to application. Our assessment is

based largely on whether the applicant has demonstrated to us (and other relevant regulators) that it understands the obligations and expectations on new appointees fully and has put in place measures to meet these requirements.

5.7.1 Application for a new appointment

Before granting an appointment, we must be satisfied that the applicant has sufficient relevant experience of operating in the water and sewerage sectors to carry out its duties as an appointee. It is the applicant's responsibility to demonstrate its operational viability.

To demonstrate to us that an applicant has the competencies required to technically and operationally be able to fulfil the functions of an appointed water company at the site applicants should provide:

- an explanation and organogram of the corporate structure of the group of which the applicant is a part;
- an organogram of the applicant's organisational structure;
- evidence that the applicant understands the obligations on appointees in the water and sewerage sectors and is capable of meeting these obligations and a description of how the applicant proposes to fulfil the functions of an appointee including obligations under the WIA91;
- a summary of any knowledge and/or previous experience the applicant has of operating in the water and sewerage sectors;
- a summary of any previous experience that the applicant's senior staff have of working in the water and sewerage sectors; and
- a description (if applicable), including evidence, of how any infrastructure required at the site will be or has been laid to industry standards;
- an explanation of any relationships the applicant has with existing appointees, such as connections to its networks and contractual arrangements (section F1 of the application form); and
- assurance that any infrastructure laid on a site that it applies to serve is laid in accordance with UK Water Industry Research's (UKWIR) standards for the water and sewerage sectors (section F3 of the application form).

5.7.2 Application for a variation

Applicants are not required to submit the same level of information when applying for variations to its existing appointment in relation to operational viability.

The applicant is required to provide the following information:

- provide the site name of the application that we have previously considered the viability and competence of the applicant for;
- confirm that they would like the information submitted as part of a previous application to be considered;
- confirm if there are/are not any updates to the information previously provided. The onus is on the applicant to identify and advise us of any updates made to the information that has previously been submitted; and
- provide any site specific information including assurance that the infrastructure laid on site is laid in accordance with UKWIR's standards for the water and sewerage sectors (section F3 of the application form).

5.7.3 Use of sub-contractors

An appointee may contract out some or all of its day-to-day activities, but cannot contract out its responsibilities. As the service provider to the site, it remains responsible for satisfying all of its statutory and appointment obligations.

If an applicant intends contracting out certain activities, we expect the applicant to provide assurance that any sub-contractors it proposes to use have the appropriate knowledge and experience relevant to the services they will carry out (section F4 of the application form).

If we grant an appointment, the applicant must trade at arm's length with any associate companies and must make sure that there is no cross-subsidisation in transactions between its appointed business on the one hand, and associate companies on the other. This is a requirement of regulatory accounting guideline 5 (RAG 5), which relates to transfer pricing in the water and sewerage sectors.

If the applicant intends to contract out some or all of its day-to-day activities it should submit the required information in section F4 of the application form.

5.8 DWI requirements

The applicant should have already contacted the DWI regarding its application during the pre-application stage. As part of the assessment stage, Ofwat will contact the DWI and ask for its comments on the application. The DWI considers that an applicant should not be permitted to supply water to customers unless it has submitted a satisfactory risk assessment report to the DWI in line with the Water Supply (Water Quality) Regulations 2016 (SI No. 614/2016).

In general, we will not grant a new appointment or variation until we have

received confirmation that the DWI is satisfied with the information provided by the applicant.

5.9 EA/NRW requirements

The applicant should have already contacted the EA/NRW regarding its application during the pre-application stage. As part of the assessment stage, Ofwat will contact the EA/NRW and ask for its comments on the application.

In general, we will not grant a new appointment or variation until we have received confirmation from the EA/NRW that it is satisfied with the information provided by the applicant in relation to the relevant site (see section 4.1.3 for further information). The EA/NRW will also confirm to us if it has granted any applications for consents to abstract and/or discharge at the site.

6. Assessment stage

We assess each application on its merits and in line with the principles set out in section 4 of our [policy statement](#).

6.1 Recommendation to Ofwat decision maker

The appropriate decision maker within Ofwat must decide whether to consult on a proposal to grant a new appointment. To do this, he or she considers evidence, analysis and a recommendation from Ofwat's licensing team following its assessment of the application. If a decision to consult is made, we inform the applicant in writing and the application progresses to a public consultation.

If a decision is made not to consult, we will inform the applicant in writing, explaining the reasons for the decision.

We usually consult on proposals to grant appointments on an unconditional basis. But there may be occasions where we consult on our intention to grant a new appointment subject to certain conditions. In such cases, we must be satisfied that those conditions are likely to be met (for example, we must be satisfied that the applicant's codes of practice are likely to be approved before we grant the application).

6.2 Public consultation

If a decision is made to consult on a new appointment, then we will do so for at least 28 calendar days to give interested parties sufficient time to make representations on our proposal to appoint. This period is a statutory requirement set out in legislation.⁷ In certain circumstances we may decide to consult for a longer period, for example if:

- the consultation period includes a number of public holidays (either in England or Wales);
- customers occupy the site;
- an application is unusually complex; or
- there is significant third party interest.

We will announce the consultation on [our website](#). This will explain why we propose

⁷ Section 8(3) WIA91.

to grant an appointment and give details of the proposal including a map of the site. It will also include details about how to respond to the consultation. As part of the final decision whether or not to grant the appointment, all representations submitted in response to the consultation will be considered.

We will serve a notice in writing of our consultation to:

- the former appointee(s) in which the Site area is located;
- the EA (and NRW, where applicable);
- the CCWater;
- the DWI; and
- all local authorities whose areas include any part of the Site area.

We will publish a summary of the consultation responses we receive in our final decision document unless they are commercially confidential or there are reasons of public interest for not doing so. Respondents must make clear to us in their response if they do not want it (or any part of it) to be published, and explain why. Even if we do not publish responses, respondents should be aware that we may still need to publish or disclose information in accordance with the Freedom of Information Act 2000, the Data Protection Act 1998 and the General Data Protection Regulations, and the Environmental Information Regulations 2004, we may be required to publish or disclose information.

6.3 Final decision on granting a new appointment

If the decision maker decides to grant the application, the appointment or variation document will be signed by our Chief Executive (or a delegated representative) and sent to the applicant. We will also vary the appointment of the existing appointee to remove the area that has been granted from its area of appointment. We will serve a notice in writing that we have granted a NAV on:

- the former appointee(s) in which the granted area was previously located;
- the EA (and NRW, where applicable);
- the CCWater;
- the DWI; and
- all local authorities whose areas include any part of the granted area.

We will publish a decision document on our website that explains our reasons for granting the new appointment. We will retain a copy of the new appointment or variation of appointment on our [public register](#) and we maintain a list of appointments on our [website](#).

6.4 Rejecting and resubmitting an application

We will only grant a NAV if we are satisfied that the application meets the statutory requirements for an application and our policy principles. We may decide to reject an application before or after we have consulted on a proposal to grant the appointment. If we do this, we will set out the reasons for our decision in writing to the applicant. If we reject an application after we have consulted on a proposal to grant the appointment, we will issue a public decision document on our website explaining the reasons for this.

Having an application rejected does not prevent the applicant from applying again for the same or any other site. If the applicant submits a revised application, we will treat it as a new one. When resubmitting an application that has previously been rejected, the applicant must make it clear in the revised application how it has addressed the reasons for the earlier rejection. We will not accept the revised application if the applicant does not do this. We will restart the application process if an applicant submits a revised application for the same site. As we will already have an understanding of the application, it may take us less time to process the revised application.

6.5 Withdrawing an application

An applicant may decide to withdraw its application at any time before the new appointment has been granted. The applicant must inform us in writing if it wishes to do this. We will then confirm in writing that we are no longer considering the application.

If an applicant is thinking of withdrawing an application, we may agree to suspend the application process and wait for its final decision.

Examples of where we have seen applications withdrawn in the past include because:

- the applicant lost the support of the developer that owned the site (and the developer decides to select the existing appointee or an alternative provider);
- an application was made under the unserved criterion, but water and/or sewerage services were required at the site before an appointment could be granted;
- an application was made under the unserved criterion, but the site was verified as being served; or

- we decided not to consult on a proposal and rather than re-submitting a revised application, the applicant chose to withdraw its application.

Glossary of terms

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

Bulk supply: A bulk supply is the bulk supply of water from one appointed water company to another or a bulk discharge of sewage from one sewerage company into the sewers of another sewerage company. Companies can agree a bulk supply agreement that sets out the terms and conditions of a bulk supply, including the price.

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

CCWater: The Consumer Council for Water is the statutory consumer body for the water industry in England and Wales.

Consent criterion: Criterion for a NAV application whereby the prospective NAV applies on the basis that the existing appointee agrees to transfer the site or premises to the prospective NAV.

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.

GSS: All customers of water and sewerage companies are entitled to guaranteed minimum standards of service, as laid down by the Government. These rights are known as the guaranteed standards scheme. Where a company fails to meet any of these standards of service then it is required to make a specified payment to the affected customer.

Instrument of Appointment: An appointment made by the Secretary of State or Ofwat 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.

Large user criterion: Criterion for a NAV application whereby the prospective NAV applies on the basis that it will use a large amount of water. In Wales this is over 250 megalitres of water a year. In England this is more than 50 megalitres of water a year.

MOSL: Market Operator Services Limited. MOSL is the market operator of the business retail water market.

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

ODI: Outcome delivery incentives.

Ofwat: The Water Services Regulation Authority.

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

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

Undertaker: A company appointed under section 6 of the Water Industry Act 1991.

Unserviced criterion: Criterion for a NAV Application whereby the prospective NAV applies on the basis that there are no existing water and/or sewerage mains connections on the site.

WIA91: Water Industry Act 1991.

WRMP: Water Resources Management Plan. Every five years statutory WRMPs set out an appointed company's intended approach for at least the next 25 years.

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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