

February 2020

**Notice of proposal to insert a special
licence condition in the licences of Anglian
Water Business Limited and to revoke the
licences of NWG Business Limited**

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1. About this notice and how to make representations

Market entry, exit and consolidation are common features of competitive markets and it is often the case that the make-up of such markets evolves over time as new entrants join the market, successful firms grow and less successful firms exit.

When the business retail market opened, legal provisions were put in place to enable incumbent water companies to exit the business retail market. Once exited, they can no longer provide retail services to business customers in their area of appointment. These customers were transferred to acquiring licensees¹. The market arrangements also provided for acquiring licensees to become the mandatory backstop where a retailer makes a disorderly exit from the retail market (for example, in the case of insolvency), and for the purpose of directions to supply (including for gap sites – that is, sites that were not previously identified as being eligible for supply in the business retail market).

If the original acquiring licensee for a particular geography exits the market, there is currently no provision in the market's regulatory framework for the replacement supplier to assume the responsibilities of the acquiring licensee for that area. There is therefore no backstop supplier for that area, which means there would be no retailer for customers to be allocated to for interim supply events or for direction to supply.

Following the consolidation of two acquiring licensee businesses (Anglian Water Business Limited (“**AWB**”) and NWG Business Limited (“**NWGB**”), the business now wishes to give up its NWGB licences to rely on AWB's licences. This would see the exit of one of the acquiring licensees and leave no backstop supplier in Northumbrian Water's area of appointment. Subject to AWB's agreement, we propose addressing this gap by inserting a special condition into AWB's licences. The special condition will require AWB to fulfil the role of backstop supplier in the Northumbrian Water area. Details of the proposed special condition are set out at pages 10 to 11.

¹ An acquiring licensee has the same meaning in this document as set out at Regulation 6 of the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (the 'Retail Exit Regulations').

Before making licence modifications under section 171 of the Water Industry Act 1991 (“**WIA91**”), we are required to give notice:

- a) stating that we propose to make the modifications and setting out their effect;
- b) stating the reasons why we propose to make the modifications; and
- c) specifying the period (not being less than twenty-eight days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made, and shall consider any representations or objections which are duly made and not withdrawn.

This document is the notice required for our proposed modification. Any representations on or objections to this notice should be made by **5pm on 16 March 2020**. These should be addressed to brigitte.gaylor@ofwat.gov.uk or by post to:

Brigitte Gaylor
Market Outcomes & Enforcement
Ofwat
Centre City Tower
7 Hill Street
B5 4UA

2. Background to NWG Business Limited and its request for the revocation of its Water Supply Licence and Sewerage Licence

2.1 Background to NWGB

- 2.2 On 30 September 2016, NWGB was granted a water supply licence and a sewerage licence² (“**the Licences**”) with retail and restricted retail authorisations.
- 2.3 In August 2017, a 50:50 joint venture was finalised between Anglian Water Venture Holdings Limited and Northumbrian Water Group Limited³ to form a company with the trading name of Wave Limited (“**Wave**”).
- 2.4 AWB and NWGB, which each hold Water Supply and Sewerage Licences (“**WSSLs**”), have outsourced their functions to Wave, which acts on behalf of both licensees. AWB and NWGB are both acquiring licensees, for the areas of appointment of Anglian Water and Northumbrian Water respectively. We explain more about acquiring licensees further on in this document.
- 2.5 In June 2018, NWGB wrote to its customers explaining that they were to be transferred to AWB. Thereafter, on 31 August 2018, all businesses and assets operated and owned by NWGB and all its customers were transferred to AWB.
- 2.6 We note that such transfer of customers from one licensee to another was facilitated by a modification which Ofwat made to the [Retail Exit Code \(“REC”\)](#) on 25 January 2018. As a result of the modification, a licensee can include in its Scheme of Terms and Conditions a provision allowing it to cease supply to customers in a limited set of circumstances, that include where “the Licensee sells or otherwise transfers ownership of all or part of its business to another Licensee who offers a supply to the Eligible Exit Area Customer on an equivalent Scheme of Terms and Conditions.”

2.7 Consequently, on 7 January 2020, NWGB applied to Ofwat for the revocation of its licences. It requested we revoke its licence by the end of the 2019-20 financial year.

2.8 Revocation of licences

2.9 On 16 March 2016, the Secretary of State issued a general authorisation to Ofwat to grant and revoke water supply and sewerage licences.

2.10 Under the [standard licence conditions \(SLC\)](#), Ofwat may revoke a licence by serving a notice on the licensee in accordance with the general authorisation given by the Secretary of State, and in any of the circumstances specified in SLC 10.

2.11 NWGB Business Limited has requested the revocation of its licences under SLC10 (2)(a) which allows Ofwat to revoke licences with the consent of the licensee.

2.12 Ofwat is required to publish a notice ahead of revoking a WSSL licence. SLC 11 requires that in a notice of revocation Ofwat must specify the matters relied upon to justify the revocation and the date on which the revocation is to take effect, which (except in the case of urgency; insolvency; or where the licensee has consented to the revocation) must not be less than 30 days after the date the notice has been served. If the revocation is deemed to be urgent, the notice must specify the reasons for this.

2.13 We consider that we are able to revoke the licence of NWGB on the grounds that it has consented to the revocation. We will take into account any representations or objections made on the proposals in this document ahead of publishing the required notice of revocation.

² Referred to jointly as WSSLs (see links to both company's [WSSL licences](#)).

³ Both Anglian Water Venture Holdings Limited and Northumbrian Water Group Limited are holding companies, rather than regulated entities.

2.14 Revocation of NWGB's licences in Scotland

- 2.15 NWGB was granted water supply and sewerage licences in Scotland on 2 October 2014, under section 6(1) of the Water Services etc. (Scotland) Act 2005 (the "2005 Act").
- 2.16 NWGB has told us that it intends for NWGB to exit the market in Scotland in the same way, although its timetable for doing this is later than in England as it has not yet completed the full migration of customers from one system to another.
- 2.17 We have not received any communication from the Water Industry Commission for Scotland (WICS) about NWGB's plans, but we do not consider that this should hinder our process of revoking NWGB's licences for the English and Welsh market.

3. Customer Protection

3.1 Customer transfer and communications

3.2 When we revoke a WSSL, we seek to ensure that there is no detriment to customers as a result of the revocation. In this case, where a customer has transferred from one licensee to another, we have to ensure that:

- there are no outstanding and/or unresolved disputes associated with the outgoing licensee.
- the incoming licensee has communicated with its customers:
 - its name and contact details;
 - the date from which it will start to supply them;
 - details of the applicable Scheme of Terms of Conditions; and
 - their rights to switch to a different retailer.
- the transferred customers will be supplied on equivalent terms and conditions as those of its previous retailer.

3.3 On 7 January 2020, NWGB provided us with a copy of a letter which it sent to its customers in June 2018 communicating to them details of the change in ownership and change in responsibility for their services and providing reassurance that the company's brand (Wave) along with the customers' current terms and tariffs would remain unchanged. The letter also stated that the change would not affect their right to switch provider at any time.

3.4 Given the evidence it supplied to us, we consider NWGB has complied with paragraph 6.1.2 of the [REC](#). This requires that at least two months before a licensee discontinues supplies it must write to all its customers providing certain information.

3.5 Acquiring Licensee obligations

- 3.6 For the purposes of the Retail Exit Regulations, following Northumbrian Water's exit as a retailer in the business retail market, NWGB is the acquiring licensee in Northumbrian Water's area of appointment.
- 3.7 Acquiring licensees are the mandatory backstop retail suppliers in the event of an interim supply event and for directions to supply under the Retail Exit Regulations, which includes gap site allocations.
- 3.8 At the date of exit from the non-household retail market of the regional undertakers, the Secretary of State imposed conditions on the acquiring licensees under Regulation 11(4) of the Retail Exit Regulations for them to be on the list of eligible suppliers in the event of an Interim Supply event occurring in the area for which they became the acquiring licensee. Under Regulations 43 and 58 of the Retail Exit Regulations, acquiring licensees must also be on the lists of eligible water supply and sewerage licensees for the purposes of directions to supply. Although there may be other licensees on the relevant lists, it is only an acquiring licensee who is obliged to be on the lists; other licensees can elect to withdraw from the lists. This means that if no other retailer has opted in to being able to provide retail services to customers in that area, customers are allocated to the acquiring licensee as a default.

3.9 Why is a special condition required?

- 3.10 An acquiring licensee is defined by reference to the licensee that acquired the incumbents' non-household customers at the date of its retail exit (see Regulation 6 of the Retail Exit Regulations). There is no statutory provision requiring that a licensee that takes over the business of an acquiring licensee itself become the acquiring licensee for that new area. If an acquiring licensee exits the market (by choice or otherwise), this would currently leave a gap in customer protection as there would be no backstop supplier in the relevant incumbent area.
- 3.11 NWGB is an acquiring licensee in Northumbrian Water's area. As such, currently if we were to revoke NWGB's licences, there would be no acquiring licensee in that area and therefore no backstop supplier for customers.

3.12 Therefore, to ensure that this customer protection remains, we consider that there needs to be an alternative arrangement to ensure there is a mandatory backstop retail supplier in place. Our proposed approach is to insert a special condition into AWB's licences so that it is obliged to be the backstop supplier in Northumbrian Water's area of appointment.

3.13 Proposed content of a new special condition

3.14 The purpose of the new special licence condition is to confirm that a licensee that takes over from an acquiring licensee is deemed to be the acquiring licensee in respect of the mandatory backstop arrangements. Our proposal is to do this by replicating the language of Regulations 43 and 58 of the Retail Exit Regulations by requiring the licensee to apply to Ofwat to be included on:

- the list of Eligible Water Supply Licensees maintained in accordance with Regulation 43 of the Exit Regulations for the Relevant Retail Exit Area;
- the list of Eligible Sewerage Licensees maintained in accordance with Regulation 58 of the Exit Regulations for the Relevant Retail Exit Area; and
- to elect to an eligible licensee in the Relevant Retail Exit Area in accordance with paragraph 4.1.2 of the Interim Supply Code.

3.15 The proposed drafting of the special licence conditions for both the water supply and sewerage licences is set out below.

3.16 Proposed Water Supply Licence Special Condition

Water Supply Licence Special Condition:

Definitions:

Acquiring Licensee: has the meaning given in Regulation 2 of the Exit Regulations;

Eligible Licensee: has the meaning given in Section 2 of the Interim Supply Code issued by the Authority pursuant to sections 63AF and 110O of the Act, as amended from time to time;

Eligible Water Supply Licensee: has the meaning given in Regulation 2 of the Exit Regulations;

Exit Regulations: means the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016, as amended from time to time;

Relevant Retail Exit Area: means the water supply area of Northumbrian Water Limited as at 1 April 2017.

The Licensee must apply to the Water Services Regulation Authority to be included on the list of Eligible Water Supply Licensees maintained in accordance with Regulation 43 of the Exit Regulations for the Relevant Retail Exit Area. At the request of the Licensee, the Water Services Regulation Authority may decide not to include the Licensee on the list of Eligible Water Supply Licensees for the Relevant Retail Exit Area where:

- (a) such a decision would leave at least one Acquiring Licensee on that list; and
- (b) the Water Services Regulation Authority is satisfied on the basis of the proposed business model of the Licensee that it would be appropriate for the Licensee not to be included on the list.

The Licensee must elect to be an Eligible Licensee in the Relevant Retail Exit Area in accordance with the Interim Supply Code.

3.17 Proposed Sewerage Licence Special Condition

Sewerage Licence Special Condition:

Definitions

Acquiring Licensee: has the meaning given in Regulation 2 of the Exit Regulations;

Eligible Licensee: has the meaning given in Section 2 of the Interim Supply Code issued by the Authority pursuant to sections 63AF and 110O of the Act, as amended from time to time;

Eligible Sewerage Licensee: has the meaning given in Regulation 2 of the Exit Regulations;

Exit Regulations: means the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016, as amended from time to time;

Relevant Retail Exit Area: means the sewerage area of Northumbrian Water Limited as at 1 April 2017.

The Licensee must apply to the Water Services Regulation Authority to be included on the list of Eligible Sewerage Licensees maintained in accordance with Regulation 58 of the Exit Regulations for the Relevant Retail Exit Area. At the request of the Licensee, the Water Services Regulation Authority may decide not to include the Licensee on the list of Eligible Sewerage Licensees for the Relevant Retail Exit Area where:

- (a) such a decision would leave at least one Acquiring Licensee on that list; and
- (b) the Water Services Regulation Authority is satisfied on the basis of the proposed business model of the Licensee that it would be appropriate for the Licensee not to be included on the list.

The licensee must elect to be an Eligible Licensee in the Relevant Retail Exit Area in accordance with the Interim Supply Code.

4. Next Steps

- 4.1 Should there be no objections or representations to this notice, we will publish a notice to revoke NWGB's Licences. We intend that the licence revocation will be effective no later than by 31 March 2020.

Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
We regulate the water sector in England and Wales.

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