

March 2020

Ofwat's reasons for varying South West Water's area of appointment and updating statutory documents to include the Isles of Scilly

About this document

Ofwat has [varied the area of appointment of South West Water Limited \("SWW"\)](#) so that it becomes the water and wastewater services provider for the Isles of Scilly ("**IoS**") with effect from 1 April 2020. **Part A** of this document sets out Ofwat's reasons for making this decision.

It follows a [consultation in February 2019](#) on our proposal to vary SWW's area of appointment to include the IoS.

The variation of SWW's area to include the IoS has been made under the Water Industry Act 1991 ("**WIA91**") which was extended to cover the IoS with effect from 1 November 2019. Other relevant statutory documents, including regulations, were extended to cover the IoS with effect from 27 March 2020.

Ofwat has also issued [a notice](#) confirming that previous statutory notices issued by us will apply on the IoS from 1 April 2020. **Part B** of this document explains the reasons for issuing this notice.

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PART A

1. Introduction

- 1.1 The variation of SWW's appointment to become the water and wastewater services provider for the IoS follows many years of work and consideration by the Department for Environment, Food and Rural Affairs (Defra), Ofwat, the Environment Agency, the Drinking Water Inspectorate, the Consumer Council for Water, SWW and stakeholders on the IoS.
- 1.2 The appointment of a statutory water and sewerage company to the Isles was agreed by all parties as the right approach in order to bring the IoS' water and wastewater infrastructure up to the standards of mainland England, so as to meet the challenges of protecting public health and safeguarding the environment, both now and in the future.
- 1.3 Various key pieces of water legislation within England have not applied to the IoS (or have only been applied in part). This included the Water Industry Act 1991 (**WIA91**), with the consequence that the provision of water and wastewater services was not regulated in the same way as on the mainland.
- 1.4 Water and wastewater services have been supplied by the Council of the Isles of Scilly (the **Council**), the Duchy of Cornwall and the Tresco Estate. There are also a number of private arrangements.
- 1.5 Government has now extended the WIA91 to cover the IoS. This enables us to extend SWW's area of appointment. SWW is committed to a package of measures that will deliver substantial benefits for residents of, and visitors to, the IoS.

2. Background

- 2.1 In 2016, Defra invited expressions of interest from water and sewerage undertakers operating on the English mainland to operate the public water and wastewater networks on the IoS. SWW was the only company that responded.
- 2.2 SWW submitted an application to us to extend its area of appointment to include the IoS to have effect from 1 April 2020. We conducted a [consultation](#) on SWW's application in February 2019.
- 2.3 We received 31 responses to our consultation. No responses received to the consultation objected to the proposals. Key issues that were raised included the

allocation of non-household customers in the business retail market and unmeasured charging.

- 2.4 Following the consultation, in July 2019, we issued a [‘minded-to’ decision](#). That set out that Ofwat intended to vary SWW’s licence to include the IoS once the legislation had been extended to apply to the IoS. The minded-to decision also summarised the representations to the consultation and set out our responses to those representations.
- 2.5 In the minded-to decision, we said that if there were material changes to the information on which we had relied in order to make the minded-to decision, “those changes would be taken into account in making the final decision on whether to vary SWW’s area of appointment.”
- 2.6 In February 2020 SWW wrote to us confirming that it would be in a position to take on operational responsibility for the Islands from 1 April 2020. This followed SWW’s acceptance of [Ofwat’s final determination](#), which included certain funding and other commitments relating to the IoS.
- 2.7 An issue that has materially changed, since we issued the minded-to decision, is how non-household customers will be supplied. Our consultation document envisaged that non-household customers on the IoS would be supplied by a retailer rather than by SWW, bringing the IoS in line with the rest of England. Since issuing our minded-to decision, it has become apparent that there is no retailer in a position to take on the IoS at this stage. We have therefore agreed with Government and SWW that SWW will supply non-household customers until such time as one or more retailers are in a position to take over the non-household market. It is envisaged that this will be for a period of around five years. We deal with this issue in more detail in section 3 below.
- 2.8 In addition, SWW and other water companies are having to reprioritise in the best interests of their customers to manage the COVID-19 pandemic. One consequence of this is that SWW’s programme of metering on the IoS will be delayed. We discuss this in more detail in section 3.
- 2.9 The Order extending the Water Industry Act 1991 to the IoS came into effect on 1 November 2020 ([Isles of Scilly \(Application of Water Legislation\) Order, 2019](#)) (“**2019 Order**”). Other relevant statutory documents, including regulations, were extended to cover the IoS with effect from 27 March 2020 by means of the [Isles of Scilly \(Application of Water Legislation\) Order 2020](#) (“2020 Order”). The 2020 Order also amended the 2019 Order by inserting a new provision which provides for the first time appointment of a water company on the IoS (“original Isles of Scilly variation”). The variation of SWW as the water and wastewater

provider for the IoS has been made under this new provision. The change to the 2019 Order was necessary to enable SWW to supply non-household customers on the IoS.

2.10 In our consultation, we said that we envisaged making the variation to SWW's area of appointment in about November 2019, after the WIA91 was extended to the IoS. This date was delayed so SWW could consider Ofwat's Final Price Determination, issued in December 2019, prior to confirming its decision to take on the IoS. Following their agreement to the Determination, it then emerged that no retailer would be able to take on the IoS from 1 April 2020, and the variation could therefore only be made on or after 27 March 2020, once the 2020 Order had come into effect which would enable SWW to provide the non-household services.

3. Non-household customers on the IoS

3.1 As stated above, SWW will be the retail supplier for non-household customers for water and wastewater services for a transitional period, after which time our expectation is that non-households will be served by one or more retailer as part of the non-household water retail market. We have reviewed the transitional arrangements that SWW has proposed and consider they will be in the best interests of non-household customers.

3.2 We consider that a transition period is in the interest of non-household customers because a number of issues need to be resolved before the retail market can work well for them. SWW will have to install or upgrade some meters so that customers can be confident they are receiving accurate bills. It would be beneficial for customers to understand their own levels of consumption before entering the market. Similarly, this transitional period will be important for SWW and customers to identify and address any other issues associated with customers' supply. Prior to market opening on the isles, there will be a need to communicate further with non-household customers to make them fully aware of the market and the role of retailers. In addition, because of the nature of many businesses on the isles, being run from premises which are also homes, there is a challenge in accurately categorising non-household customers on the isles and ensuring that they receive the right communication.

3.3 We have also considered the relevance of two licence conditions that apply to all water companies in England that have not exited the non-household retail market. Condition R5 is the Customer Protection Condition which provides that "when dealing with customers in Eligible Premises [ie non-household customers], the Appointee [ie SWW in this case] must comply with the

Customer Protection Code of Practice (**CPCoP**) in respect of those customers”. Condition R4 applies, in modified form, the Wholesale Retail Code to the provision of retail services to non-household customers in a non-retail exit area.

- 3.4 It has not been practical to date or of sufficient priority to consult on introducing condition R5 or some similar provision into SWW’s licence. Instead, we have reviewed SWW’s Code of Practice which will apply to non-household customers and we have provided feedback to SWW on it, including how it compares to the CPCoP.
- 3.5 We are satisfied that the draft Code will protect non-household customers even though it does not provide, in all respects, equivalent protection to the CPCoP. We have highlighted to SWW that its draft Code sets out what it will do if it gets something wrong, rather than setting out proactive principles for how the company will deal with its customers (which is the approach of the CPCoP). SWW has said that it is willing to include in its Code reference to the general principles in the CPCoP save a principle relating to data accuracy. We are content with its proposed approach and consider it proportionate for serving the non-household market in the current circumstances.
- 3.6 We consider it important and appropriate that the SWW Code applying to non-households on IoS is underpinned by a licence condition. Household customers are protected by Condition G (Core Customer Information) and prior to market opening, non-household customers were also protected by Condition G.¹ We therefore envisage that Condition G will either be extended to again cover non-households or Condition R5 (Customer Protection Condition) will be inserted into SWW’s licence. SWW is keen that any condition is not unduly onerous, particularly given that it is not a retailer. Its initial thinking is that an amendment to condition G may be the best way forward. We have agreed to progress this discussion with SWW when its operations on IoS are more established, and we expect this to be over the next year.
- 3.7 Condition R4 requires water and sewerage companies that have not exited the non-household retail market and are therefore providing both wholesale and retail services to non-household customers, to operate as if their wholesale and retail businesses were separate. This is to create a level playing field with new retailers coming into the market. We proposed to SWW that licence condition R4 apply after a transitional period and we have now agreed in principle that it will apply from 1 April 2025 if there is no retailer in place at that time. It will be necessary for SWW to facilitate one or more retailers taking over on the IoS (for

¹ Condition G of companies’ licences was amended to take into account that all non-household customers would be covered by the CPCoP. Condition G now only regulates information to non-household customers in a limited respect.

example through the provision of relevant data). We will work with SWW, the retail market operator (MOSL) and retailers to facilitate a smooth transition into the retail market.

4. Unmeasured bills and meter installation

- 4.1 Households on the islands of St Mary's and Bryher, who are customers of the Council, are currently unmetered. As we explained in detail in our minded-to decision, SWW is intending to phase in its equivalent mainland unmeasured charges, with the full equivalent charges to the mainland being levied from April 2022 onwards. It is offering a large discount on its mainland charges for the first year, and a smaller discount from April 2021. This allows time for households to ask SWW to install a meter and switch to metered billing. We expect bills to be lower than paid currently if customers switch to a meter and rectify leakage on their properties. If a household were to remain on unmeasured charges, we would expect that from April 2022 the combined water and wastewater bill would be more than double the Council's current equivalent bill.
- 4.2 SWW has committed to installing meters as soon as practical after a customer has requested it. This would ordinarily be within three months of the request being made. This is not feasible currently as SWW is reprioritising operational activities in response to the ongoing Covid-19 pandemic. Nevertheless, it is important that customers are made aware of and have the opportunity to opt in to metered billing before April 2021, and therefore we will engage with SWW again in autumn 2020 to check that they are giving this matter appropriate priority.

5. Our decision to vary SWW's area to include the IoS

- 4.1 Accordingly, having satisfied ourselves of the arrangements for the supply to non-households, and having received SWW's confirmation that it is operationally ready, we confirmed our decision to vary SWW's area to include the IoS, for the reasons set out in this document and in our earlier minded-to decision.

PART B

6. Notice applying various documents issued by Ofwat to the Isles of Scilly (the Notice)

- 6.1 The 2019 Order applied the WIA91 to the IoS from 1 November 2019 and the 2020 Order applied subsidiary legislation to the IoS from 27 March 2020. The Notice confirms that in addition, all documents issued by Ofwat under the WIA91 will apply to the IoS with effect from 1 April 2020. The Notice applies to any existing statutory rules, codes, and guidance issued by Ofwat under the WIA91, or regulations made under the WIA91.
- 6.2 Some of the statutory notices that have now been applied to the IoS can only be issued following a prescribed statutory procedure. We have reviewed the relevant procedure for all the documents listed in an annex to the Notice. Where there is a prescribed procedure, there is also a procedure for 'urgent or minor amendments' and a minor amendment is "a revision for which consultation is not necessary". We consider that the reissue of all these documents falls into the category of a minor amendment.
- 6.3 The procedure for a minor amendment is to give notice to the Secretary of State, and to give the Secretary of State 14 days to object to the notice. We confirm that we have followed this process and have received no objection from the Secretary of State. We are therefore issuing the notice applying our existing statutory documents to the IoS.

Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
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