

June 2023

Consultation on changes to our New Appointments and Variations policy and assessment guidance

Ofwat

About this document

This consultation concerns our process for assessing applications for new appointments and variations.

The regulatory framework allows for water companies' areas of appointment to be varied and for new appointments to be granted. Water companies apply to us to make these variations. We refer to these as "new appointments and variations". This is typically undertaken when a developer decides it would prefer a different water company to serve a new development than the current incumbent water company.

We are proposing an update to our guidance and policy statements which relate to our assessment process. The proposed updates would introduce a requirement that applicants for sites in Wales clearly evidence how the applicant serving the site rather than the current incumbent water company would be beneficial to customers. This change is to comply with the Strategic Priorities and Objectives Statement to Ofwat issued by the Welsh Government.

We are also looking for stakeholder views on the potential for introducing a similar requirement for applications for sites in England in the future.

Executive summary

New appointees are new entrant water companies initially looking to serve small, distinct geographical areas. They typically compete with the large (incumbent) water companies to lay the water and wastewater infrastructure for new housing developments (the new connections market). If selected by the housing developer and licenced by Ofwat (a new appointment or variation), they then become the water and / or wastewater company for the new premises.

A new appointment is made when a company is newly appointed by us to provide water and/or sewerage services for a specific geographic area. A new appointee has the same duties and responsibilities as the incumbent water company. A variation is where an existing appointed company asks us to vary its appointment so it can extend the areas it provides services to. These processes also require us to vary the appointment of the incumbent company to exclude the relevant area from the area that it serves.

To facilitate the process for applying for new appointments and variations (**New Appointments**), we have published a statement of policy¹ and a guidance document² for applicants. These documents set out the process by which we will assess applications for a new appointment and the information that we require applicants to provide to us to support their application. These documents are informed by both the legal duties we are required to follow when assessing applications as well as the relevant statements of priorities and objectives issued to Ofwat by the Welsh Government and the Secretary of State.

In December 2022, the Welsh Government issued a new Strategic Priorities and Objectives Statement (**SPS**) to Ofwat.³ We are proposing to update our policy for assessing applications for New Appointments in Wales to comply with this SPS.

Specifically, to comply with the SPS, we are proposing to place a new requirement on applicants to clearly evidence that the granting of the New Appointment will be beneficial to customers, where the application relates to an applicant with an appointment which is wholly or mainly in Wales, or where the existing incumbent operates wholly or mainly in Wales.

Responding to this consultation

We welcome comments on this proposal. Please email your responses to charging@ofwat.gov.uk. The closing date for this consultation is **29 June 2023**.

¹ [New appointment and variation applications – A statement of our policy](#)

² [Application guidance for new appointments and variations](#)

³ [Strategic Priorities and Objectives Statement to Ofwat issued under section 2B of the Water Industry Act 1991 \(gov.wales\)](#)

We intend to publish responses to this consultation on our website at www.ofwat.gov.uk. Subject to the following, by providing a response to this consultation you are deemed to consent to its publication.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the General Data Protection Regulation 2016, the Data Protection Act 2018, and the Environmental Information Regulations 2004. For further information on how we process personal data please see our [privacy policy](#).

If you would like the information that you provide to be treated as confidential, please be aware that under the FoIA there is a statutory [Code of practice](#) which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

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1. Why we are proposing to make this change

1.1 Legal Framework

All water companies in England and Wales are appointed for specific areas, and for every area of England and Wales there must be a single appointed company.

Under section 8 of the Water Industry Act 1991 (**WIA 91**), Ofwat may make a new appointment and vary existing appointments, following the process set out in the legislation and in compliance with:

- statutory duties set out in section 9 of the WIA 91;
- our general statutory duties at section 2 WIA 91; and
- the requirement at sections 2A and 2B WIA 91 that we carry out this function in accordance with the statements of strategic priorities and objectives set out for us by the Secretary of State and Welsh Government respectively.

1.2 Welsh SPS

In December 2022, the Welsh Government issued a new Strategic Priorities and Objectives Statement to Ofwat (**SPS**).⁴ In this statement the Welsh Government set out that it does not support the introduction of competition “...**where it cannot clearly be evidenced that it [the activity of new entrants] would be beneficial to customers.**” We are therefore proposing to update our process for assessing applications for New Appointments relating to sites wholly or mainly in Wales to reflect this position. The proposed changes would place an additional requirement on applicants for such New Appointments to clearly evidence how the applicant serving the site rather than the current incumbent water company would be beneficial to customers (the customers that will be served for water and/or sewerage services on the site). We consider that the benefits the applicant is required to clearly evidence could include benefits provided to the environment as these are of benefit to all customers. This would also align with the Welsh Government’s expectation that Ofwat “... **assess company proposals as a package, incentivising companies to develop a package of investment to deliver best value for customers and the environment in the round...**”

The proposal will require us to update our documents that set out the current process for applying for a New Appointment or a Variation:

- [New appointment and variation applications – A statement of our policy](#) (our **Policy Statement**); and

⁴ [Strategic Priorities and Objectives Statement to Ofwat issued under section 2B of the Water Industry Act 1991 \(gov.wales\)](#)

- [Application guidance for new appointments and variations](#) (our **Application Guidance**)

This proposal will only apply to applications that relate to sites that are wholly or mainly in Wales or where the existing incumbent operates wholly or mainly in Wales. We consider that the content of the Welsh SPS gives us a sufficiently strong steer to do this.

We also invite stakeholders to provide their views on whether we should consider placing a similar requirement on applicants for New Appointments in England in the future.

1.3 Reducing regulatory burden

In carrying out our work we have regard to the principles of best regulatory practice, including that our activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, as required by section 2(4) of the Water Industry Act 1991.

Every year, we seek to ensure that regulatory burdens are kept to a minimum while ensuring companies deliver the best outcomes for customers. We are keen to implement this proposed change in a way that is consistent with our wider approach.

2. The proposed changes

To address the requirement of the Welsh SPS, we propose the addition of the following sections to our Application Guidance for New Appointments and Variations and our Policy Statement. The text we are proposing to add is shown in red.

2.1 Proposed change to our application guidance

We propose to make the following change to section 5.5 of our application guidance

“Section 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, **or, in respect of applications which meet the description set out below, that there is clear evidence of customer benefit compared to the customers' position if served by 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 – 5.5.7.

Where either the area of the applicant is, or will be should the application be granted, wholly or mainly in Wales, or where the existing undertaker operates wholly or mainly in Wales, the applicants must also set out how the end customers and / or environment would benefit as a result of the applicant serving the site rather than the existing incumbent. Throughout this document, when we refer to the "no worse off" requirement, this includes a positive requirement to show customer benefit in respect of such applications.

Benefits to the customer could include, but are not restricted to, discounted charges, improved service levels or additional services provided that are not offered by the incumbent. The specified benefits may include benefits to the environment, such as through enhanced water efficiency at the new premises, or sustainable drainage arrangements. While some form of benefit to end customers and/or environment must be evidenced, we do not require the applicant to demonstrate benefits under all of the categories set out in sections 5.5.1 – 5.5.7. Applicants should attach a supporting document that clearly evidences that the application is beneficial to customers.

If the information intended to be submitted in sections 5.5.1 – 5.5.7 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.”

2.2 Proposed changes to our policy statement

We propose to make the following change to section 1 our policy statement:

“In assessing applications for a new appointment or variation of appointment we will seek to ensure that:

- in the case of all applications, customers are no worse off than if they had been served by the local incumbent and are adequately protected, and where either the area of the applicant is, or will be should the application be granted, wholly or mainly in Wales, or where the incumbent in whose area the site currently sits operates wholly or mainly in Wales, end customers and / or the environment would benefit if the application is granted (the ‘no worse off’ principle);
- appointed companies can finance their functions for the site and wider business; and
- the applicant will be able to fulfil its functions in that the site will be operationally and technically viable.”

We also propose to add the following new section 5.1.5:

Section 5.1.5

Where the area of the applicant is, or will be should the application be granted, wholly or mainly in Wales, or where the incumbent in whose area the site current sits operates wholly or mainly in Wales, we will assess the application to ensure that granting the application will provide a benefit to the end customers and/or the environment as required by the Welsh Government’s 2022 Strategic Policy Statement to Ofwat⁵. Benefits to the customer could include, but are not restricted to, discounted charges, improved service levels or additional services provided that are not offered by the incumbent. The specified benefits may include benefits to the environment, such as through enhanced water efficiency at the new premises, or sustainable drainage arrangements. This is likely to mean that in at least one of

⁵ [Strategic Priorities and Objectives Statement to Ofwat issued under section 2B of the Water Industry Act 1991 \(gov.wales\)](#)

the areas set out at paragraphs 5.1.1 – 5.1.3 above, the applicant evidences a better customer offer than that offered by the existing incumbent.

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3. Consultation questions and next steps

We welcome comments on the proposed changes to our Policy Statement and Application Guidance by **29 June 2023**, in particular:

1. What are your views on the proposed update to our Policy Statement and Application Guidance that would apply to applications for sites in Wales?
2. What are your views on how, with respect to this policy proposal, we can best achieve our aim that regulatory burdens are kept to a minimum while ensuring companies deliver the best outcomes for customers?
3. What are your views on introducing a similar requirement for sites in England at some point in the future?

We will consider the responses to this consultation before issuing a decision document setting out whether we will make the changes we have proposed. We will then republish our Policy Statement and Application Guidance documents. As part of this republishing, we intend to make a number of minor administrative updates to these documents. These minor updates are not changes in our policy, so we are not consulting on these changes. However, we wanted to make stakeholders aware that there will be some changes to the documents. For example, the Policy Statement and Application guidance documents contain links to other documents that have been superseded since the Policy Statement and Application Guidance were last published. We will update the Policy Statement and Application Guidance documents to so that the links within them direct stakeholders to the appropriate documents.

**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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