

November 2023

# **Decision document on changes to our new appointee application assessment process in Wales**

**Ofwat**

## About this document

This document sets out our decision to change the process for assessing applications for new appointments and variations (**New Appointments**) to an applicant with an appointment which is wholly or mainly in Wales, or where the existing incumbent operates wholly or mainly in Wales. This change introduces 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 (the **Welsh SPS**).

This document follows our [consultation](#) on a proposal to make this change which we published on 1 June 2023.<sup>1</sup>

We also asked for stakeholder views on introducing a similar requirement for New Appointments in England in the future. As set out in our consultation document, this was done to inform future decisions, so we are not making any decisions on the process for assessing applications for New Appointments in England at this time.

We are also using this opportunity to make a number of minor administrative updates to our New Appointment application guidance and policy documents.

## Responses to the consultation

We received 16 responses to our consultation. Of these, 5 were from new appointee companies, 9 were from incumbent water companies and 2 were from other stakeholders. We have provided a complete list of the respondents in Appendix 1 and have published all the responses on our website alongside this document.<sup>2</sup>

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<sup>1</sup> [Consultation on changes to our New Appointments and Variations policy and assessment guidance - Ofwat](#)

<sup>2</sup> [Consultation responses](#)

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# 1. Proposed changes to our New Appointment application process in Wales

In December 2022 the Welsh Government issued a new Welsh SPS. 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.” In June 2023, we consulted on introducing a requirement to the process for assessing applications for New Appointments 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. This would require applicants to clearly evidence how the applicant serving the site rather than the incumbent water company would be beneficial to customers.

We proposed to introduce this requirement by making changes to our [New appointment and variation applications – A statement of our policy](#) (our **Policy Statement**) and our [Application guidance for new appointments and variations](#) (our **Application Guidance**). Full details of the proposal and the reasons behind the proposal can be found in our consultation document.<sup>3</sup>

## 1.1 Proposed changes to our Application Guidance

Below we set out section 5.5 of our application guidance with the new text, on which we consulted, in red.

### “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.

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<sup>3</sup> [Consultation on changes to our New Appointments and Variations policy and assessment guidance – Ofwat](#)

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.”

## **1.2 Proposed changes to our Policy Statement**

We proposed to make changes to section 1 our policy statement as set out in red below.

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

## 2. Responses to the consultation

We received 16 responses to our consultation. The full list of respondents can be found in Appendix 1. We have also published the responses on our website alongside this decision document.

In summary, the new appointees that responded to the consultation and the Independent Networks Association did not agree with the proposed changes, but the other respondents agreed with the proposal. Additionally, all respondents had the same view on the proposal being introduced, whether for the proposal or against it, for sites with a Welsh company as the incumbent and sites with English companies as the incumbent.

### 2.1 Views on the proposed changes in Wales

The new appointees noted that the incumbent companies would not be required to show evidence of providing benefits to customers when they provided new connections. As a result, they considered the proposed changes to be an additional burden on new appointees and puts them at a disadvantage when competing against the incumbent companies for new sites to serve.

In its response, the Independent Networks Association (**INA**) considers that Ofwat has some discretion when implementing policy to support the policy statements issued by Welsh Government and Defra<sup>5</sup> and the Welsh SPS did not place an expectation on Ofwat to make the proposed changes. It also notes that there are already indirect benefits to end customers as incumbent water companies and new appointees are in competition for new opportunities and therefore incentivised to improve performance.

The water companies that operate wholly or mainly in Wales, as well as the Consumer Council for Water (**CCW**) and the Home Builders Federation (**HBF**) supported the proposed change. All of these noted the advantage of having a regime of New Appointments that can transparently demonstrate how it provides benefits to end customers.

CCW considers that the New Appointment regime should provide benefits to all customers and therefore welcomes this change. It also notes that the proposed

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<sup>5</sup> The Department for Environment, Food and Rural Affairs.

changes would achieve our aim of introducing this change while keeping the regulatory burden to a minimum.

The HBF noted some additional ways that new appointees could provide benefits to customers such as include providing firefighting mains in adoptable highways and the increased use of sustainable drainage systems.

## **2.2 Views on the making a similar changes in England in the future**

We did not propose to make a change to the process for assessing applications for New Appointments in England in this consultation. However, we asked stakeholders to provide their views on introducing a similar requirement in England at some point in the future.

All of the incumbent water companies in England that responded to this consultation supported the introduction of such a change in the future. Many of these noted the advantage of a regime for new appointments that transparently provides benefits to end customers, who do not have a direct input into the decision on whether a developments site is served by an incumbent water company or a new appointee.

The new appointees, CCW and the HBF had the same views on introducing this requirement in England as they did on introducing this requirement in Wales, with the new appointees objecting to the proposal while CCW and the HBF supported it.



### 3. Our decision to change New Appointments assessment process in Wales

After reviewing the responses to our consultation provided by stakeholders, we have decided to go ahead with the proposed change as set out in section 1 of this document. We have also made an additional change suggested by CCW to update section 2 of our Policy Statement that sets out the wider context to give more information about the Welsh SPS.<sup>6</sup>

We proposed this change to our process of assessing applications for New Appointments for sites served by Welsh water companies to better align our policy with that of the Welsh Government. We note that there is clear support for this proposal the stakeholders other than the new appointees. Many stakeholders highlighted the advantage of a regime of New Appointments that clearly demonstrates how it provides benefits to the end customers, who typically do not have a voice in deciding whether a development site is served by an incumbent water company or a new appointee.

We understand that the new appointees view this as an additional regulatory burden and potentially makes it more difficult to compete with the incumbent water companies. However, we do not consider this to be a significant barrier to new appointees. We note that we are not restrictive in setting out what these benefits to end customers should be and, upon reviewing recent applications, many new appointees already provide clear benefits to their customers, so this change will only require them to set out these benefits as part of the application process.

We are also in the process of reviewing our approach to assessing applications for New Appointments in both England and Wales to streamline the process and remove any unnecessary administrative burdens, which should benefit new appointees, incumbent water companies and their developer customers.

Taking into account these responses from stakeholders and the directions from the Welsh SPS, we have decided to go ahead with this proposed change. We have

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<sup>6</sup> We have added a section to our Policy Statement to explain that the Welsh SPS issued in 2022 states that the Welsh Government does not support competition in the water and wastewater market where it cannot be evidenced that it is beneficial for customers.

published the revised versions of our Policy Statement<sup>7</sup> and Assessment Guidance<sup>8</sup> alongside this decision document.

This updated policy will be applied to all applications for new appointments and variations we receive after 23 November 2023. After this date, applications that 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 will be required to submit a supporting document with their application that demonstrates how end customers and or the environment will benefit from the applicant serving the site rather than the incumbent company.

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<sup>7</sup> <https://www.ofwat.gov.uk/publication/new-appointment-and-variation-applications-a-statement-of-our-policy/>

<sup>8</sup> <https://www.ofwat.gov.uk/publication/application-guidance-for-new-appointments-and-variations/>

## **4. The New Appointments application process in England**

As we set out in section 2.2, we asked stakeholders for their views on implementing a similar change to our process for assessing applications for New Appointments in England to inform future decisions, but we were not intending to implement any changes at this stage. We may consider implementing such a change in England in the future. If we do so, we will engage with and consult with stakeholders prior to doing so.

We are developing the regulatory framework for new appointees in England in compliance with the UK government SPS. As part of this, we are reviewing our approach to assessing applications for New Appointments in both England and Wales to streamline the process and remove any unnecessary administrative burdens.

## 5. Administrative updates to our Policy Statement and Application Guidance

Our Application Guidance and Policy Statement documents were last published in 2018 and 2019. Since then, there have been a number of updates that resulted in some of the information in these documents becoming out of date but did not result in a change to our process or policy. As we are re-issuing these documents as part of this consultation, we have decided to use this opportunity to make these administrative updates to the [Policy Statement](#) and [Application Guidance](#) at the same time.

The updates include:

- Updating the hyperlinks of reference documents;
- Referencing more recently published documents that are useful for applicants to review and consider;
- Updating the contact details for Ofwat and other stakeholders involved in the application process;
- Adding references to the Licensing portal. The portal was introduced in 2020 to enable applicants to more easily submit new appointment and variation applications to Ofwat;
- Reflect the updates made in recent years by the Environment Agency, Drinking Water Inspectorate and Natural Resources Wales about the assessment and information available for applicants.

## Appendix 1 – list of respondents

We received responses from the following organisations to our June 2023 consultation:

- The Consumer Council for Water (**CCW**)
- The Home Builders Federation (**HBF**)
- Independent Networks Association (**INA**)
- ESP Water Limited
- Independent Water Networks Limited
- Leep Water Networks Limited
- Icosa Water Services Limited
- Dŵr Cymru Cyfyngedig
- Hafren Dyfrdwy Cyfyngedig
- Northumbrian Water Limited
- Portsmouth Water Limited
- Southern Water Services Limited
- Thames Water Utilities Limited
- United Utilities Water Limited
- Wessex Water Services Limited
- Yorkshire Water Services Limited

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