

February 2023

Notice of proposal to insert a special licence condition into Castle Water Limited's licence, and to revoke the licences of Castle Water (South East) Limited and Castle Water (Southern) Limited

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1. About this document

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.

Following previous acquisitions, the company that trades under the name Castle Water operates in the business retail market through three sets of water supply and sewerage services retail licences (“**WSSLs**”)¹, and has requested that it consolidate these such that it operates under one (Castle Water Limited).

When the market opened, acquiring licensees² were named in exit applications³ to be mandatory backstop suppliers in the event of an interim supply event in a particular area (for example, when a retailer becomes insolvent), and by the Retail Exit Regulations for the purposes of directions to supply (including for gap sites – that is, sites that were not previously identified as being eligible for supply in the non-household retail market).

If an acquiring licensee exits the market, there is currently no provision in the regulatory framework for the replacement supplier to assume the responsibility to become the acquiring licensee for that area and there is therefore no backstop supplier for that area, which means there would be no retailer for customers to be allocated to in the event of an interim supply event, nor provision for direction to supply.

The three sets of licences that Castle Water operates under are acquiring licensees for the following incumbent water companies;

- Castle Water Limited for Thames Water Utilities Limited;
- Castle Water (South East) Limited for South East Water Limited; and
- Castle Water (Southern) Limited for Affinity Water Limited.

Therefore, consolidating these licences into one set of licences could remove intended protections for customers within the business retail market.

¹ Referred to jointly as WSSLs (all licences can be viewed at our ‘[licences and licencees](#)’ page at www.ofwat.gov.uk)

² 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’).

³ The definition of exit application is set out at Regulation 4 of the Retail Exit Regulations.

We propose addressing this gap by inserting a special condition into the licences of the Castle Water Limited, requiring it to fulfil the role of backstop supplier for the retail exit obligations and for the purposes of direction of supply for the areas for which Castle Water (South East) Limited and Castle Water (Southern) Limited are currently the acquiring licensees. Details of the proposed special condition are set out from page 10 of this document.

Ofwat is required to publish a notice ahead of revoking a WSSL licence. Section 17I of the Water Industry Act 1991 (“**the Act**”) states Ofwat may modify the conditions of a licence with the consent of the licence holder, and must consult for 28 days, giving notice:

- stating that it proposes to make the modifications and setting out their effect;
- stating the reasons why it proposes to make the modifications; and
- 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.

WSSL holders are also held to the Standard Licence Conditions (“**SLC**”). 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.

As required by the above provisions, this document provides notice of our proposals to modify the licence conditions of Castle Water Limited's licence, and to revoke the licences of Castle Water (South East) Limited and Castle Water (Southern) Limited. This provides opportunity for interested stakeholders to provide comments on our proposals. Details of how to respond are set out in section 5. We will take into account representations made in response to this notice when reaching our final decisions on the proposed modification and revocations.

2. Background

Revocation of licences

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

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. As one of these circumstances, SLC 10(2)(a) allows a revocation where a licensee has consented to the revocation.

In January 2024 we received a request from Castle Water (South East) Limited and Castle Water (Southern) Limited, under SLC 10(2)(a), to revoke their licences to enable their consolidation into those of Castle Water Limited.

Castle Water (South East) Limited

On 9 November 2016, Invicta Water Limited was granted water supply and sewerage licences with retail and restricted retail authorisations. Invicta Water Limited became the acquiring licensee for South East Water Limited when the latter exited the business retail market on 1 May 2018. Further details of what being an acquiring licensee entails are set out in section 4 below.

On 1 July 2018, Castle Water Holdings Limited, the parent company of Castle Water Limited, acquired Invicta Water Limited, through the acquisition of its entire issued share capital. This was [assessed by the Competition and Markets Authority \("CMA"\)](#), which made a decision not to make a referral under section 22(1) of the Enterprise Act 2002 on 12 September 2018.

After the approval of the merger, Ofwat was asked to change the name on the licence from Invicta Water to Castle Water (South East) Limited.

Castle Water (Southern) Limited

On 9 November 2016, Affinity for Business (Retail) Limited was granted water supply and sewerage licences with retail and restricted retail authorisations. At market opening it became the acquiring licensee for Affinity Water Limited.

On 11 March 2020 Castle Water Limited announced plans to merge with Affinity for Business (Retail) Limited, and this was completed on 1 April 2020.

Following the merger, Ofwat was asked to change the name on the licence from Affinity for Business (Retail) Limited to Castle Water (Southern) Limited.

Transfer of customers

Castle Water has since transferred its customers across all three sets of licences to the Castle Water Limited licences but have continued to hold all three. 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."

Grounds for revocation

On 16 January 2024 we received a request from Castle Water (South East) Limited and Castle Water (Southern) Limited, under SLC 10(2)(a), to revoke their licences to enable their consolidation into those of Castle Water Limited. They requested we revoke these licences by the end of the 2023-24 financial year.

We are advised that all affected customers have been notified about the mergers.

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.

We consider that we are able to revoke the licences of Castle Water (South East) Limited and Castle Water (Southern) Limited on the grounds that it has consented to the revocation. We propose that that decision is conditional on the modification of the Castle Water Limited's licences to ensure appropriate protection for customers. Details of that proposed modification are set out in section 4.

3. Customer Protection

When it revokes a WSSL, Ofwat seeks 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 the exiting licensee has complied with the requirements set out in paragraph 4.1.2 of the [REC](#), which requires that the exiting licensee has written to its customers providing:

- The name and contact details of the new licensee to which it is selling or otherwise transferring ownership to of all or part of its business.
- The date from which the new licensee will start to supply them;
- A copy of applicable Scheme of Terms of Conditions, and confirmation that the new licensee will supply on an equivalent Scheme of Terms and Conditions;
- An explanation that the customer has the right to switch to a different retailer at any time; and
- An explanation that alternative terms and conditions from the applicable Scheme of Terms and Conditions may be available from the new licensee and information about how such alternative terms and conditions may be obtained..

Customers from both Castle Water (South East) Limited and Castle Water (Southern) Limited on 8 October 2023 were written to providing all of the required information set out above.

4. Issue arising from the proposed revocation of Castle Water (South East) Limited and Castle Water (Southern) Limited's licences

Acquiring Licensee

Acquiring licensees are named in the exit applications WSSL licensees submit when they wish to exit the business retail market. As set out in section 2 above, Invicta Water Limited and Affinity for Business (Retail) Limited (now Castle Water (South East) Limited and Castle Water (Southern) Limited) were acquiring licensees for the purposes of the Retail Exit Regulations, for the areas served by South East Water Limited and Affinity Water Limited respectively.

Acquiring licensees have a number of functions, including being 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.

As such, they must be on the various lists of eligible suppliers. At the date of exit from the business retail market of incumbent water and sewerage 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 geographical 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.

There is no statutory provision for a licensee that takes over the business of an acquiring licensee to itself become an acquiring licensee. An acquiring licensee is legally defined by reference to the licensee that took over the incumbent water and sewerage undertaker's non-household customers at date of retail exit (see Regulation 6 of the Retail Exit Regulations).

Therefore, if an acquiring licensee chooses to or in some other way exits the market, this would leave a gap in customer protections as, under the current regulatory framework, there would be no backstop supplier in the relevant incumbent water company's area. Therefore, there would need to be an alternative arrangement in place to retain these customer protections.

As a result of the above regulatory framework, if we were to revoke the licences of Castle Water (South East) Limited and Castle Water (Southern) Limited, there would be no acquiring licensee in the areas served by South East Water Limited and Affinity Water Limited, and hence no backstop supplier or supplier for the purposes of direction to supply. In order to retain these protections for customers, we therefore propose to modify the licences of Castle Water Limited to insert a special condition requiring it to be the backstop supplier for the relevant areas, that is, so that it takes on the obligation to apply to be, and remain, on the various lists of eligible licensees. Details, and the proposed wording of this licence modification is set out below. This approach would follow precedent set out in March 2020 when the licences of [NWG Business and Anglian Water Business](#) were respectively revoked and amended.

Proposed content of a new special condition

The purpose of the new special 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, within the licence condition, 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;
- Apply to Ofwat 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; and
- Elect to an eligible licensee in the Relevant Retail Exit Area in accordance with paragraph 4.1.2 of the Interim Supply Code.

The proposed wording of the special conditions are set out below.

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 1100 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 areas of South East Water Limited and Affinity 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:

such a decision would leave at least one Acquiring Licensee on that list; and

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.

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 1100 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 South East Water Limited and Affinity 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:

such a decision would leave at least one Acquiring Licensee on that list; and

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.

5. Responding to this notice

We invite stakeholders to make comments or representations on the proposals set out in this notice to:

1. Modify the licence of Castle Water Limited to introduce the special condition set out above.
2. Subject to the above, to revoke the licences of Castle Water (South East) Limited and Castle Water (Southern) Limited

We ask that such responses are submitted to us by no later than 25 March 2024. You can email your responses, as well as direct any enquiry you may have about this document to licensing@ofwat.gov.uk.

We may publish responses to this document on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished.

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 Data Protection Act 1998 and the Environmental Information Regulations 2004.

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.

Next Steps

We will review all responses we receive to this consultation and make our decision on whether to include a special condition in Castle Water Limited's licences and subsequently, whether to revoke the licences of Castle Water (South East) Limited and Castle Water (Southern) Limited's.

Should we decide to revoke the licences of Castle Water (South East) Limited and Castle Water (Southern) Limited's, our intention is that the revocation will become effective the day after we publish notice of our final decision to revoke the WSSLs. Subject to consultation responses we may receive, and the relevant actions being completed in the market's central operating systems, we currently intend that the licence revocations will be effective no later than by 31 March 2024.

**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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