



Department
for Environment
Food & Rural Affairs

Consultation on the Water supply and sewerage licencing regime: Standard licence conditions and the approach to secondary legislation

Summary of responses and the UK Government's response

March 2016



© Crown copyright 2016

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.3. To view this licence visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3/ or email PSI@nationalarchives.gsi.gov.uk

This publication is available at <https://www.gov.uk/government/consultations/water-supply-and-sewerage-licensing-regime-standard-licence-conditions-and-approach-to-secondary-legislation>

Any enquiries regarding this publication should be sent to us at:

WSSL Consultation
Water Services Team
Department for Environment, Food and Rural Affairs
Area 3B
Nobel House
17 Smith Square
London
SW1P 3JR

wssl.consultation@defra.gsi.gov.uk

www.gov.uk/defra

Contents

1. Introduction	1
Summary and next steps.....	2
2. Answer to consultation questions	3
Q1: Have you any comments about the proposed standard licence conditions for the new licences?.....	3
Q1 cont: Do you agree with the proposals to change Condition 11 and add a new Condition B2?.....	3
Q2: Are you aware of any retail sewerage arrangements that should be included in the sewerage exemption regulations? Please provide details and indicate whether a blanket or individual exemption should be granted.....	4
Q3: Do you agree that the market share of a sewerage licensee should be based on the amount of water supplied to the premises it serves? If not, what would be an appropriate way to measure market share in the sewerage market?.....	4
3. Government response	5
Annex A – List of respondents	8

1. Introduction

The Water Act 2014 (WA14) introduces reforms to the water supply licensing regime (the “WSL”) that will allow the water sector to achieve increased resilience, increased customer choice and support economic growth. These include changes that will allow more competition in the retail market for non-household water and sewerage services. “Retail” services incorporate all customer-facing activities such as billing, meter reading and dealing with customers’ enquiries. The reformed WSL will be known as the water supply and sewerage licensing regime (the “WSSL”).

Our reforms will allow all eligible businesses, charities and public sector organisations to switch from any monopoly water company whose area is wholly or mainly in England (“English undertakers”) to another supplier of retail services (the “licensee”) when the retail market opens in April 2017. The same water will be supplied through the same pipes and the wastewater taken away through the same networks, but the customer-facing services may be provided by someone other than the incumbent water company.

These reforms do not extend to water companies wholly or mainly in Wales. The new WSSL licences will provide for the continuation of provisions relevant to existing WSL licences in Wales until such time as Welsh Ministers may decide to align the regime in Wales with that in England.

WSSL licences will provide the holders with certain rights to provide services to non-household premises. The two licences, one for water supply and one for sewerage, will each include one or more “authorisations” relating to the services that the holder wants to provide. These licences will form an important part of the regulatory framework which also includes ministerial charging guidance¹, Ofwat’s charging rules and codes produced by Open Water to regulate agreements between licensees and undertakers.

Ofwat conducted a consultation on its licensing policy and has published the outcome of that consultation². The Secretary of State, having consulted the Welsh Ministers on conditions applicable to the new water supply licence, is required to publish standard licence conditions before Ofwat can start issuing new licences.

Prior to publishing these standard licence conditions for the new WSSL regime the government ran a public consultation between 17 December 2015 and 28 January 2016. The aim of this consultation was to provide stakeholders with a final opportunity to provide comments on the draft standard licence conditions before Ofwat opens the WSSL licence application process in April 2016.

¹ <https://www.gov.uk/government/publications/water-industry-charging-guidance-to-ofwat>

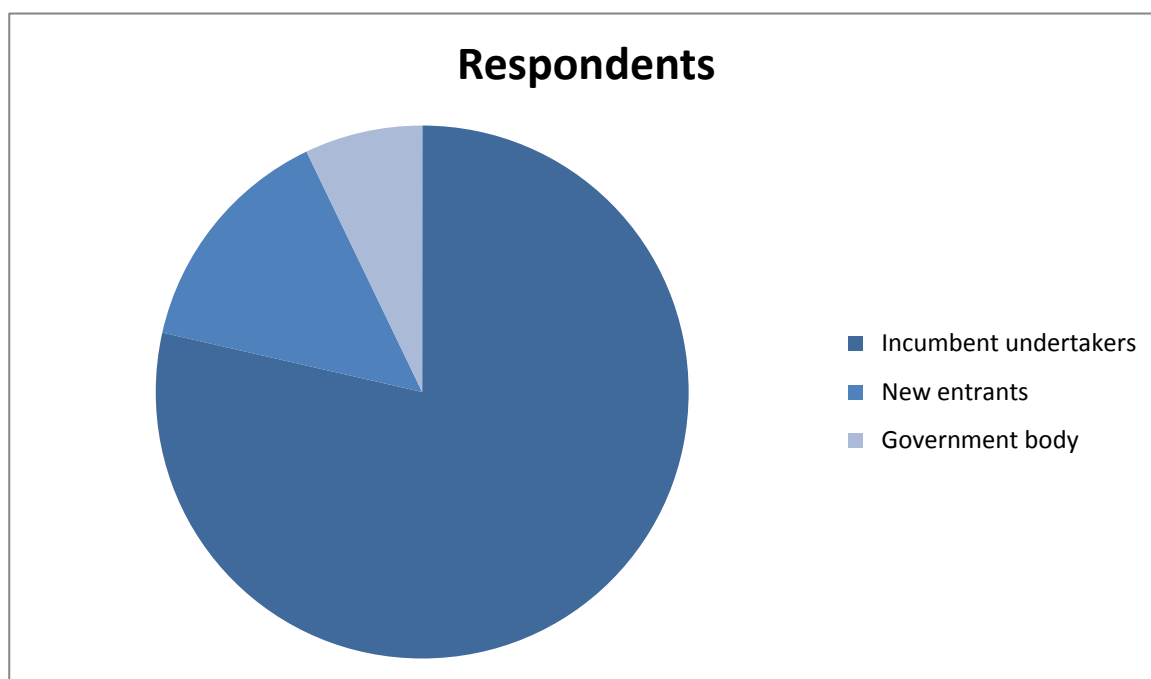
² <http://www.ofwat.gov.uk/consultation/licensing-and-policy-issues-in-relation-to-the-opening-of-the-non-household-retail-market-a-consultation/>

There are also a number of revisions to secondary legislation that will need to be taken forward in order to open the retail market and the consultation included details of the government's approach to introducing and amending relevant secondary legislation.

Summary and next steps

Due to Ofwat's previous dialogue and consultation with stakeholders, the government's consultation only asked three specific questions around the proposed final draft licence conditions.

In total 14 responses were received: 11 from incumbent undertakers, two from new entrants and one from a government body. A list of those respondents can be found in Annex A.



Following the consultation we have reviewed all the responses, summarised them below and published the government's response. In summary, the majority of respondents were supportive of the government's approach and signalled this in their responses to the consultation. Some concerns were raised by a mix of respondents. These have been considered and addressed in the government's response as explained below. There were also other comments and requests for additional information by respondents that have been recorded and, where possible, will be actioned by either Defra or Ofwat.

Alongside the government's response we have published the final version of the standard licence conditions for the WSSL regime. This provides the standard licence conditions common to all authorisations and specific conditions relating to retail and restricted authorisations. Standard licence conditions for wholesale, supplementary and disposal authorisations will be consulted on at a later date.

2. Answer to consultation questions

Q1: Have you any comments about the proposed standard licence conditions for the new licences?

There was strong support for the standard licence conditions from almost all respondents. A number of those expressing support also made some suggestions in respect of detailed drafting points. Two respondents also expressed concerns about the relationship between exiting undertakers and their associate licenses.

The two respondents felt that the new associate licensees could have an unfair advantage. They were concerned about the lifting of the in-area trading ban which currently prevents holders of current WSL licences from serving customers in the areas of associate undertakers. These two respondents felt that there were lessons to be learnt from other markets and that the licence conditions needed to be strengthened.

Both respondents also recommended stronger licence conditions around Condition 7 in the new WSSL licences for associate licensees that have taken a transfer of customers from an incumbent undertaker that has exited (e.g. provisions that were adopted in Scotland when Business Stream was legally separated from Scottish Water). However one respondent acknowledged that Part A of Condition 7 went some way to ensuring that new entrants will receive equal treatment.

Amongst the suggestions in respect of detailed drafting, two respondents raised some general comments on the need for simplification. Both respondents were keen that the standard licence conditions were simplified, that there was minimal duplication with other documents, especially where it was only for information rather than imposing an obligation, or instead reference was made rather than repetition (i.e. with market codes), and where it is necessary that there is consistent wording. One respondent highlighted the potential administrative burden of having to amend the standard licence conditions to reflect any changes to a market code.

Q1 cont: Do you agree with the proposals to change Condition 11 and add a new Condition B2?

Nearly all respondents agreed with the proposals to change Condition 11 (Notice of revocation in relation to insolvency) and to add a new Condition B2 (new Customer Protection Code of Practice).

On Condition 11 one respondent only supported it *“on the basis that the proposed 24 hour revocation timetable applies only on the insolvency of the licensee”*. Another welcomed the protection to wholesalers and the limit this would place on illiquid retailers causing disruption within the market. The same respondent also welcomed the consistency with

Ofgem's powers, "such consistency is desirable". Another respondent noted that "this will help protect customers by allowing for a quicker transition to an alternative supplier".

On the new Condition B2, whilst supportive, some respondents were keen that the code was proportionate and not placing an undue administrative burden on licensees. One respondent said:

"...it is important that any code of practice put in place achieves the correct balance between protecting customers' interests and avoiding unnecessary barriers to switching or burdensome regulations which discourages participation in the market".

One respondent made two specific points on aspects they would like the Customer Protection Code of Practice to cover. These included provisions on back-billing and the treatment of micro-businesses.

Q2: Are you aware of any retail sewerage arrangements that should be included in the sewerage exemption regulations? Please provide details and indicate whether a blanket or individual exemption should be granted.

Overall there was support for the introduction of exemption regulations which covered mains connection arrangements with one respondent saying:

"We agree with the proposed scope of the blanket exemption to allow sewerage retail arrangements to continue where there are mains connections or 'bulk discharge' arrangements in place between sewerage undertakers (including new appointees)."

With the exception of one respondent, we were not notified of any sewerage arrangements that should be included in the exemption regulations. The respondent raised a concern around certain sewerage arrangements that they believe may not fit the new retail market and therefore appropriate for exemption. These arrangements cover specialised industrial effluents that do not use the public sewer, instead using dedicated pipelines, and are non-standard arrangements and therefore not covered by the usual pricing formula.

Q3: Do you agree that the market share of a sewerage licensee should be based on the amount of water supplied to the premises it serves? If not, what would be an appropriate way to measure market share in the sewerage market?

Overall the respondents agreed that the market share for a sewerage licensee should be based on the amount of water supplied to the premises it serves. Some respondents

highlighted that this approach is consistent with the water retail licence, some raised concerns that this is not a perfect solution and some suggested alternatives that should also be replicated in the water market.

One concern raised by three respondents was the impact of a disproportionately lower amount of sewage going into the network than water going into the premises. The respondents suggested this could be because of leaks or where the premises consume a large amount of water but do not discharge an equivalent amount of sewage.

Nevertheless, there were also caveats that the number of circumstances where this may happen would be relatively small and was unlikely to have much influence on whether the 20 percent threshold is crossed. One respondent suggested:

“Using the amount of water supplied in these cases [where there is high consumption] may not give an accurate measure of the retailers’ market share. Incumbent companies will be best placed to advise on the number of eligible premises where this is an issue, and this will confirm whether this would have a material impact on the calculation. We suggest that Defra is aware of the potential effect this could have when assessing market share.”

Two respondents, although agreeing with the government’s proposed approach, suggested alternatives. One was based on eligible premises served and the other on turnover of the retail business. Both respondents suggested that their alternative approaches should also be adopted in the calculation of water supply licensee market shares.

Only one respondent, a new entrant, was opposed to the suggested approach.

“No, our view is that this proposal allows the opportunity for a monopoly licensee to have its vote above the majority of smaller licensees. The number of votes, as opposed to the market share, should be the only deciding factor in determining the most popular and widely accepted resolution. Allowing the licensee with the largest market share to have more weight attached to their views than those of smaller players could create an unfair market where only the largest company may prosper.”

3. Government response

The government would like to thank all the respondents for the thoughtful and detailed feedback which we have received in response to this consultation. We welcome the broad support for the new standard licence conditions for the water supply and sewerage licencing regime. We have considered all the points raised in responses carefully and have summarised our views below in response to the three main questions.

Q1: Have you any comments about the proposed standard licence conditions for the new licences? Do you agree with the proposals to change Condition 11 and add a new Condition B2?

On the concerns expressed by the two new entrant respondents, securing a level playing field is a key objective for the government and something we take very seriously. The Open Water Programme has developed a number of policies that focus on the relationship between wholesalers and their incumbent retailers and, by extension, their associate licensees. For example, undertakers' licences will be changed to require them to follow code processes to provide wholesale services to their own retail businesses on the same basis as new entrant licensees. Furthermore incumbents already have duties to comply with competition law and Ofwat has wider powers to address discriminatory behaviour than are available to the Scottish economic regulator, for example in terms of concurrent powers under the Competition Act 1998. Special conditions for associates, such as we saw in Scotland, are therefore unnecessary and could have the unintended consequence of limiting Ofwat's flexibility to respond effectively to cases of anti-competitive behaviour.

Based on the broad support for the changes proposed by Condition 11 and a new Condition B2, these will now be included in the standard licence conditions.

With regards to the two specific points raised on back-billing and micro-businesses these are not for this consultation to address and have been passed to Ofwat. Ofwat are currently working on the Customer Protection Code of Practice and will address both these points in their future consultation.

Half of the respondents also made detailed drafting comments on the licence conditions. These have been carefully considered by Defra and Ofwat and we have concluded that no changes to the standard licence conditions are necessary. Below are some of the key concerns that were raised with an accompanying explanation.

Some respondents raised concerns about the definition of sensitive customers within Condition 6. In addition one respondent raised concerns about sensitive customers occupying eligible non-household premises. Amendments to the definition are a matter for the Code Panel. Ofwat approve changes recommended to it from the Code Panel and so will be aware of any proposed changes to the definition of sensitive customers. We also note that Ofwat will be consulting on additional guidance around eligibility shortly.

One respondent raised a concern that Condition 10 on Revocation was too broadly drafted, lacks a reference to relevance and there was no indication of whether or not there should be a notification requirement. The clauses are in line with the existing WSL licence and we note that other respondents have not raised concerns. We therefore do not consider there is a need to alter the conditions.

Two respondents raised concerns with Condition 1 of Part B on the Market Arrangement Code. One concern was that the wording in (1)(1) might accidentally create a circular requirement for applicants. We do not consider that this is the case as the Market Operator Services Ltd will check an applicant for market entry assurance certification

(MEAC) after the applicant has applied to Ofwat for a licence. Once Ofwat has assessed the licence application it will (if satisfied) confirm that it is minded to grant a licence, subject to the applicant passing the MEAC. Once an applicant passes the MEAC then a licence will be granted. These are the same requirements as set out in the Market Arrangement Code (MAC).

The other concern was around whether the Modification and Contents of the MAC sat naturally within the licence conditions. The MAC is enabled by licences and therefore the licence conditions should be clear on the contents and modification of the MAC. The change control process for the MAC requires Ofwat input and approval, so the MAC and licences should remain consistent.

Q2: Are you aware of any retail sewerage arrangements that should be included in the sewerage exemption regulations? Please provide details and indicate whether a blanket or individual exemption should be granted.

With the exception of one respondent no retail sewerage arrangements were raised for inclusion in the sewerage exemption regulations. The arrangements that were brought to our attention are special agreements with a sewerage undertaker and therefore do not need to be exempted.

Q3: Do you agree that the market share of a sewerage licensee should be based on the amount of water supplied to the premises it serves? If not, what would be an appropriate way to measure market share in the sewerage market?

The government acknowledges that using water-use as a proxy to determine market share for sewerage licensees is not perfect. However, ahead of market opening the government considers that this is the most pragmatic and logical route to follow because water-use information will be available in the market.

We are grateful for the two respondents who made credible recommendations for alternative solutions. However, as they noted in their responses, were we to change the approach for determining market share for sewerage licensees we would also have to mirror it for determining market share for water licensees and we feel that this would cause unnecessary uncertainty close to market opening.

In light of the respondents' views, and as mentioned in the consultation, the government will keep this under review. The Order introducing this change will include a statutory review provision as required for all new regulations that impose burdens on business.

Annex A – List of respondents

The 14 respondents are listed below:

1. Anglian Water Group
2. Business Stream
3. Clear Business Water
4. Consumer Council for Water
5. Dŵr Cymru / Welsh Water
6. Northumbrian Water (Retail)
7. Northumbrian Water (Wholesale)
8. Severn Trent Plc
9. South East Water
10. South West Water & Bournemouth Water
11. Southern Water
12. Thames Water
13. United Utilities
14. Yorkshire Water