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Department for Environment, Food  
and Rural Affairs

By email to:

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## **Consultation on the standard licence conditions for the water supply and sewerage licensing (WSSL) regime and the approach to secondary legislation**

We welcome the opportunity to respond to the consultation on the draft standard conditions for the WSSL regime and Defra's approach to secondary legislation. Our responses to the consultation questions are below.

### **Question 1: 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**

We note that the proposed standard conditions are consistent with the adaptations to the existing WSL regime which Ofwat have previously consulted on. In relation to Condition B2, we agree with the principle that licensees should have an obligation to comply with the consumer protection code. As noted in our response to Ofwat on the consumer protection code however, the code itself should be proportionate and not place undue administrative burden on licensees, the cost of which may be passed on to customers. We accept the proposed change to Condition 11 on the basis that the proposed 24 hour revocation timetable applies only on the insolvency of the licensee.

### **Question 2: 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?**

We agree with the proposed scope of the blanket exemption to allow sewerage retail arrangements to continue where there are mains connection or 'bulk discharge' arrangements in place between sewerage undertakers (including new appointees). We are not aware of any sewerage arrangements between undertakers and the owners of private sewerage networks, using the undertaker's network.

### **Question 3: 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?**

We agree with the need to be able to assess the respective market shares of sewerage licensees. However, in our view, a more appropriate assessment of that market share would be by reference to the number of eligible premises served by that licensee, rather than the volumes of water supplied to those premises.

Information about the number of premises ("SPIDs") served, and the wholesale charge associated with each of those SPIDs will be available in the market from 1 April 2017. A sewerage WSSL provides up to three elements of service: wastewater, trade effluent and surface water drainage, which customers will use in different combinations. Whilst relatively small, there are also unmeasured wastewater customers. Water consumption as a proxy is not available a good indicator as it refers to only one of those three services.

The original order in 2005 setting out the method for market share based on volume of water was when the original scope for competition was aimed at both combined and retail WSLs. There was an anticipation that competition for the supply of physical water would develop over time and hence a market share test based on the quantity of water delivered aligned to this objective. The Water Act 2014 found that there had been no competition for physical water (under combined licences) and made amendments to enable more competition through retail licences (as per the success in Scotland). Hence over time, the understanding of where competition could work and the scope for competition has broadened and the method for assessing market share should adapt.

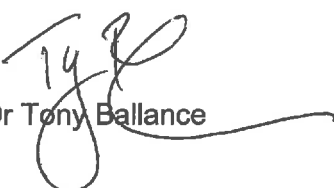
The underlying purpose of the market share test is to ensure that a sufficiently broad and representative cross-section of retailers serving 80% of customers are able to agree to licence amendments. Under the current definition of "water delivered", a retailer serving many small business customers would carry less weight than a retailer serving a few large sites. We consider it would be counter-productive to not give small businesses a sufficient say in the market.

From a retailer's perspective, market share is driven by the number of sites served by a retailer as retailer costs are driven by the number of sites. We therefore consider the better market share metric would be the number of sewerage premises served (SPIDs). This information would be easily verifiable through the Market Operator database and would allow licence changes to be made if consensus was reached based on 80% of customer premises served, irrespective of whether they were large or small users.

Whilst the market share of the overall wholesale charge is an available data point, we consider this is not appropriate as it would distort the assessment as wholesale charges differ between areas. Two different retailers with a similar portfolio of customers could have different market shares based on the wholesale charge differences.

We acknowledge that this situation already exists in relation to water WSSLs and we consider it would also be prudent to align the definitions by changing the market share test for water WSSLs to be based on the number of water SPIDs served.

Yours faithfully,

  
Dr Tony Ballance