



Severn Trent Water

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By email

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Dear Ruth

Retail market opening – further changes to instruments of appointment: a consultation

Thank you for the opportunity to comment on the above consultation. This response is provided by Severn Trent Water Limited.

We recognise the intent of the proposed licensed changes. Our comments principally relate to the implementation of those changes and the proposed drafting.

We cover each question in turn below.

Q1 Do you agree with the proposed new conditions summarised in Table 1.1? In your response, please provide comments on each of the proposed new conditions separately.

We understand the rationale for the inclusion of a condition to enable the Market Arrangements Code (MAC). Whilst we have some concerns about the inclusion of a condition to enforce a code that has separate governance arrangements, it is also important that the wording of the condition should not be so detailed so as to make routine changes to the MAC cumbersome. We believe the proposed wording represents a reasonable balance on the basis that it is substantially identical to the equivalent condition in the WSSL.

In relation to potential derogations that may be required for integrated companies, our view is that, in order to ensure a level playing field, these should be limited to those strictly necessary to enable integrated companies to operate in the market on the same terms as other market participants.

We support the requirement for the proposed stapling condition to enforce the Wholesale-Retail Code (WRC) for companies that remain vertically integrated, and the condition requiring adherence to the proposed Customer Protection Code of Practice on the basis that they will help to ensure a level playing field between vertically integrated companies and WSSLs.

Q2 Do you agree with the proposed changes to existing conditions as summarised in Table 1.2? In your response, please provide comments on each of the proposed changes separately.

We broadly agree with the intent of the proposed changes, we have therefore only commented by exception.

Condition S, Condition R 1-4. In principle, we would welcome the eventual removal of provisions relating to the existing WSL regime in favour of a single set of market arrangements. However, until this can occur, more consideration needs to be given to arrangements for the new wholesale authorisations and in particular the additional safeguards and processes that need to be in place given the operational nature of them. We look forward to further detail being included in Ofwat's forthcoming consultation on transitional arrangements.

Condition F6A2.A. We support the principle that vertically integrated companies are required to provide a separate certificate of adequacy for its non-household retail business, on the basis that this would help to create a level playing field with other retailers. However, please see our comments on the drafting of this proposed amendment to the Instrument of Appointment below.

Conditions Q and I. We are supportive of changes to these conditions on the basis that there is sufficient provision made in the WRC to ensure that retailers pass payments made by wholesalers on to end customers – including payments for leakage adjustments.

Condition G: We agree that whilst existing protections for non-household customers should be retained, it would simpler for this condition to be amended so that it applies to household customers only, and for non-household requirements to be reflected elsewhere in the market framework.

Condition F: We support the introduction of a separate “stapling” licence condition and do not regard any further amendments to Licence Condition F are required.

Q3 Do you consider that derogations may be required for small companies and/or companies whose supply systems are wholly or mainly in Wales, due to their limited number of eligible customers? Please state what any such derogations should cover.

We agree that it is in the interests of end customers and effective market operation that a single set of market arrangements is in place that applies to all licensees. However, we recognise that provisions should not be unduly cumbersome so as to discourage competition, for example, through inset New Appointments and Variations.

We therefore support the principle of some derogations being applied to ensure that arrangements are proportionate. We believe a draft package of derogations can best be developed in consultation with smaller instrument of appointment holders. We would, however, wish to have the opportunity to comment on these derogations once developed.

Q4 Do you agree with our proposal to use a combination of ‘sunset’ and/or ‘sunrise’ clauses for the changes so that we can implement these changes ahead of the Secretary of State’s decisions on retail exit?

Whilst our preference would be that Instruments of Appointment are not made unnecessary complex by the addition of provisions which do not take effect, we appreciate the need to find a pragmatic way to enable licence modifications to take effect in line with the parallel timetable for retail exit. We therefore have no objection to the use of “sunrise” and “sunset” clauses to give effect to the relevant amendments.

Q5 Do you agree with our proposal to use section 55 of the WA14 to make these changes?

In general, our preference is that when Ofwat seeks to make licence changes, it uses its existing powers under the Water Industry Act 1991. This process of actively seeking the agreement of companies, and ensuring they are ‘bought in’ to changes would help to engender trust and confidence. However, we recognise the rationale for using section 55 in this instance given the nature and circumstances of the changes proposed.

Q6 Do you have any comments on the proposed drafting set out in the Appendices?

We recognise that the drafting of the Market Arrangements Code condition and the condition relating to the Customer Protection Code of Practice are substantively identical to the drafting of the equivalent conditions of in the WSSL and on that basis agree with the drafting.

In relation to the proposed drafting of the amendment to Licence Condition F6A.2A, we propose that the wording be amended to clarify the businesses to which the certificates of adequacy apply. The wording currently refers to separate certificates in respect of “each of its retail and wholesale businesses”. It is unclear from this drafting and the related definitions whether a separate certificate of adequacy is required for an undertaker’s non-household retail businesses, or its entire retail business (including the household retail businesses). In order to ensure a level playing field with other retailers, our proposal is that integrated undertakers are required to prepare separate certificates of adequacy for their non-household retail businesses only.

In relation to the other proposed amendments to licence conditions, we recognise that comments have been taken into account following previous consultations and we have no further comments on the drafting.

We would be pleased to provide clarification on any of the points raised above.

Yours sincerely

A handwritten signature in black ink that reads 'A J Ball'.

Dr Tony Ballance
Director, Strategy and Regulation