

Draft text for the proposed WSSL standard conditions

WATER INDUSTRY ACT 1991: SECTION 17H AND 17HA

The Secretary of State, in exercise of the powers conferred on her by sections 17H(1) and 17HA(1) of the Water Industry Act 1991, having consulted where appropriate the Welsh Ministers, hereby determines that the following conditions shall be standard conditions for water supply and sewerage licences:

PART A

CONDITIONS APPLICABLE TO ALL WATER SUPPLY AND SEWERAGE LICENCES

1. Citation, interpretation and effect of certain provisions

(1) These conditions are the Standard Conditions applicable to all Water Supply and Sewerage Licences.

(2) In these conditions unless the context otherwise requires —

“the Act” means the Water Industry Act 1991;

“Condition A2 Direction” means a direction issued by the Authority pursuant to Part A, Condition 2 of these conditions specifying that some or all of the conditions in a specific part or parts of these conditions are to have effect in the Licence and, if appropriate, specifying the manner in which, the circumstances in which and/or the area in which the Licensee will be required to comply with those conditions;

“Customer Protection Code of Practice” means the code of practice issued by the Authority;

“Environment Agency” means the body established under section 1(1) of the Environment Act 1995;

“information” includes documents and anything contained in any records, accounts, estimates or returns;

“Interim Supply Code” means the code issued by the Authority under section 63AF and/or section 110O of the Act;

“Licence” means the document issued by the Authority containing the conditions applicable to the Licensee’s authorisations;

“Licensee” means the holder of the Licence to which these and such other conditions as are directed by the Authority apply;

“Market Arrangements Code” means the document designated by the Authority as the Market Arrangements Code;

“Natural Resources Body for Wales” means the body established under article 3 of the Natural Resources Body for Wales (Establishment) Order 2012;

“relevant undertaker” means either a water undertaker or a sewerage undertaker;

“Part” means a part of these conditions;

“Retail Market Code” means the Wholesale Retail Code, the Interim Supply Code or the Retail Exit Code as the context so requires; and

“Wholesale Retail Code” means the code issued by the Authority under section 66DA and/or section 117F of the Act;

(3) Any words or expressions used in the Act and/or the Water Act 2014 shall, unless the contrary intention appears, have the same meaning when used in this Licence.

(4) Words and expressions used in these conditions and references in and to these conditions shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.

(5) In construing this Licence the heading or title of any condition shall be disregarded.

(6) Any reference, express or implied, to any enactment includes:

(a) that enactment as amended, supplemented, applied or replaced by or under any other enactment from time to time;

(b) any enactment which that enactment re-enacts (with or without modification); and

(c) any subordinate legislation made from time to time under that enactment, including, where applicable, that enactment as amended, supplemented, applied or replaced as described in paragraph (6)(a) above or under any enactment which it re-enacts as described in paragraph (6)(b) above.

(7) In these conditions, any reference to any licence, code, rules, scheme, agreement, statement or other regulatory instrument or any provision thereof is a reference to that instrument or provision as amended, supplemented, transferred, novated, revised, applied or replaced from time to time.

(8) The words “including” and “include” shall mean including without limitation and include without limitation, respectively.

(9) Specific words indicating a type, class or category of thing do not restrict the meaning of general words following such specific words, such as general words introduced by the word “other” or a similar expression. Similarly, general words followed by specific words shall not be restricted in meaning to the type, class or category of thing indicated by such specific words.

2. APPLICATION OF PARTS OF STANDARD CONDITIONS

How Parts of this licence are given effect

(1) Other than condition 1, this condition 2, condition 10 and condition 11 of Part A of these conditions, any other condition or Part of these conditions will have effect in a Licence only if:

(a) in relation to any of the remaining conditions in Part A or the conditions in any other Part, the Secretary of State has provided, by a scheme made under Schedule 11 of the Water Act 2014 that it will have effect; or

(b) in relation to any of the remaining conditions in Part A, the Authority, at any point after having decided to grant a Licence, gives a Condition A2 Direction to the Licensee; or

(c) in relation to the conditions in any other Part, the Authority, at any point after having decided to grant or modify a Licence so as to grant the Licensee an authorisation specified in section 17A(2) of the Act, gives a Condition A2 Direction to the Licensee;

(2) If a Part of these conditions does not have effect in this Licence, the Licensee will not be required to comply with the requirements of that Part.

Variation of terms

(3) If a Part of these conditions has been given effect in the Licence and the Licensee applies to the Authority in writing:

(a) for a variation of the terms under which some or all of that Part of the conditions has effect in the Licence; or

(b) for some or all of that Part of the conditions to stop having effect in the Licence,

the Authority may approve that variation or cessation of the relevant Condition A2 Direction and specify the date on and from which it will have effect.

Interpretation

(4) References in a condition to a Part of these conditions, the conditions in a Part and the requirements of a Part are references to that part, those conditions and those requirements as a whole or, as the case may be, in part.

3. Conduct of Licensee

(1) The Licensee shall ensure that all such arrangements have been made as are necessary for securing that—

(a) it is and continues to be able to meet its obligations under—

(i) its Licence; and

(ii) any statutory requirement imposed on it and which applies to the activities authorised by its Licence; and

(b) it has sufficient product and public liability insurance for the activities authorised by its Licence.

4. Certificate of adequacy

(1) No later than 1st April in each year the Licensee shall submit a prescribed certificate to the Authority in a form determined by the Authority, certifying—

(a) that all of the arrangements required to meet the obligations mentioned in condition 3 above are in place; and

(b) in particular, that the Licensee has, and will have until 31st March in the following year, all the management, financial, technical, operational and other resources needed or securing that it is able to meet the obligations mentioned in condition 3 above.

(2) For the purposes of paragraph (1) “a prescribed certificate” means a certificate signed and dated after 1st March in that year by:

(a) any authorised director or the company secretary of the Licensee if authorised for that purpose, such authorisation having been given by resolution of the board of directors of the Licensee at a duly convened meeting of that board held after 1st March in that year, and accompanied by a certified copy of the minutes of that meeting; or

(b) an authorised signatory of the Licensee where that Licensee is not a limited company.

(3) Where any notice served on the Licensee by the Authority so requires, the certificate submitted under this condition shall be supplemented at such time by such verification reports as the notice may reasonably require.

(4) The Licensee shall notify the Authority immediately if at any time it becomes aware—

- (a) that it is or will be unable to certify as to the matters set out in paragraph (1), or
- (b) of any actual or expected change of circumstance which would or might prevent the Licensee from being able to submit a certificate under paragraph (1) if the obligation to do so fell at the time of the change of circumstances.

5. Emergencies and unplanned events

(1) The Licensee shall, for relevant purposes, comply with any—

- (a) reasonable instructions given to it by a relevant undertaker in relation to matters specified in a drought plan which are not the subject of a drought order or drought permit under Chapter 3 of Part 2 of the Water Resources Act 1991; or
- (b) instructions given to it by a relevant undertaker during any emergency or unplanned event (save any which are manifestly unreasonable); or
- (c) reasonable instructions given to it by a relevant undertaker in relation to any water quality incidents or any pollution incidents.

(2) For the purposes of paragraph (1)—

(a) “drought plan” shall be construed in accordance with section 39B of the Act (drought plans: preparation and review); and

(b) “relevant purposes” are the purposes of—

- (i) ensuring that water quality is not adversely affected;
- (ii) avoiding prejudice to the integrity of the supply system and/or sewerage system;
- (iii) protecting customers;
- (iv) mitigating adverse effects upon the environment;
- (v) maintaining essential supplies and services; or
- (vi) conserving supplies.

(3) Any question as to the reasonableness of any instructions given under paragraph (1) where those instructions relate to an urgent incident shall be resolved by referring that question to the Authority for its determination.

(4) A reference under paragraph (3) shall have the effect of suspending the instructions so referred pending the Authority’s determination.

(5) A reference under paragraph (3) shall not be made in respect of any instructions given under this condition to provide information.

6. Provision of information to relevant undertakers

(1) In so far as the provision of information to a relevant undertaker is not provided for by or under any enactment or any licence, code or rule produced pursuant to a requirement of any enactment, the Licensee shall provide any relevant undertaker with such information as the undertaker reasonably requires—

- (a) for the purposes of carrying out its functions;
- (b) to determine whether the Licensee has sufficient product and public liability insurance for the activities authorised by its licence;
- (c) to comply with any condition of the undertaker's appointment;
- (d) in relation to national security or civil emergencies; or
- (e) to comply with any reasonable request for information made by the Environment Agency or the Natural Resources Body for Wales.

(2) The Licensee may impose reasonable conditions on the use which the relevant undertaker may make of information provided under this condition.

(3) Any question as to the reasonableness of—

- (a) any requirement to provide information under paragraph (1); or
- (b) any condition proposed by the Licensee under paragraph (2),

shall be resolved by referring that question to the Authority for its determination.

(4) A reference under paragraph (3) shall have the effect of suspending the requirement so referred pending the Authority's determination.

(5) The Licensee shall not be required under this condition to provide any information which would be protected from disclosure or production in proceedings in the High Court on grounds of legal professional privilege.

(6) The Licensee shall immediately inform the relevant undertaker of relevant details—

- (a) if the Licensee becomes aware of any actual or potential incident which adversely affects or is likely adversely to affect—
 - (i) water quality;
 - (ii) water pressure;
 - (iii) continuity of water supply and/or sewerage service provision; or

(iv) any other matter relating to the relevant undertaker's supply system and/or sewerage system; or

(b) if a sensitive customer occupies or is likely to occupy any premises which the Licensee supplies.

(7) The Licensee shall inform the relevant water undertaker as soon as reasonably practicable if—

(a) any premises which the Licensee supplies are no longer occupied by any sensitive customers; or

(b) the Licensee has any planned interruptions in supply.

(8) For the purposes of paragraph (6), an incident includes regulatory infringements which may put the Licensee or relevant undertaker at risk of supplying water which is unwholesome as determined under section 67 of the Act (standards of wholesomeness) or unfit for human consumption within the meaning of section 70 of the Act (offence of supplying water unfit for human consumption).

(9) For the purposes of paragraphs (6) and (7), a sensitive customer is a vulnerable non-household customer and includes any non-household customer for eligible premises occupied by the sick; the elderly; the disabled; or other vulnerable sections of the population; and/or which is a hospital; or a school.

7. [Arm's length transactions](#)

(1) The Licensee shall not at any time enter into any transaction with a relevant undertaker except at arm's length, if at that time the Licensee is related to that relevant undertaker.

(2) The Licensee shall not show undue preference towards, or undue discrimination against, a relevant undertaker to which it is related, as compared with any other relevant undertaker.

(3) For the purposes of this condition the Licensee is related to a relevant undertaker if their enterprises are under common ownership or common control (within the meaning those expressions have in section 26(1) of the Enterprise Act 2002 (enterprises ceasing to be distinct enterprises)).

8. [Provision of information to the Authority](#)

(1) The Licensee shall provide the Authority with such information as the Authority may by notice reasonably require for the purpose of carrying out its functions under the Act or the Water Act 2014.

(2) Information required under this condition shall be provided in such form and manner, at such time and place, and be accompanied by or supplemented by such explanations, as the Authority may reasonably require.

(3) The Licensee shall not be required under this condition to provide any information which would be protected from disclosure or production in proceedings in the High Court on grounds of legal professional privilege.

9. Licence fees

(1) The Licensee shall pay an annual fee to the Authority determined in accordance with the following provisions of this condition.

(2) The fee shall be paid no later than the thirtieth day after the day on which the Authority serves notice on the Licensee of the amount of the fee for the year in question.

(3) Subject to paragraph (5), the fee for any year shall be the amount determined by the Authority to be the regulatory cost for that year of the Licence.

(4) For the purposes of this condition, the regulatory cost for any year of the Licence is—

(a) the Licensee's share of the estimated costs of the Authority for that year in relation to the water supply and sewerage licensing regime; plus

(b) the Licensee's share of the estimated costs of the Council for that year in relation to the water supply and sewerage licensing regime; plus

(c) if in the preceding year there was a subsisting reference under section 17K of the Act (Modification references to CMA) which related to the Licensee's water supply or sewerage licence—

(i) in the case of a reference under section 17K(1) (references in relation to activities authorised or regulated by a particular licence), the whole of the costs of the Competition and Markets Authority for that year in connection with the reference; and

(ii) in the case of a reference under section 17K(2) (references in relation to activities authorised or regulated by retail licences or combined licences), the Licensee's share of the costs of the Competition and Markets Authority for that year in connection with the reference.

(5) The fee for any year shall be adjusted to take account of the Licensee's share of any under-estimate or over-estimate of the regulatory cost for any earlier year if—

(a) the under-estimate or over-estimate has not been previously taken into account;
and

(b) the Licensee held a Licence during the earlier year in which the under-estimate or over-estimate occurred.

(6) For the purposes of paragraphs (4) and (5), the Licensee's share of costs and any under-estimate or over-estimate shall be determined in accordance with general principles specified by the Authority and set out in a notice, published in such manner as the Authority considers appropriate and served on the Licensee.

(7) For the purposes of paragraph (6), "general principles" means principles which are the same for all Licensees but which may vary from one year to another.

(8) For the purposes of paragraph (4)(b) and (c), the estimated costs of the Council and the costs of the Competition and Markets Authority respectively shall be such amounts as the Authority shall determine to be the Council's estimated costs or the Competition and Markets Authority's costs, after consulting the Council and the Competition and Markets Authority respectively.

(9) For the purposes of paragraph (4)(c), a reference under section 17K(2) shall be taken to have related to the Licensee's water supply or sewerage licence if—

(a) the Licensee held a Licence during all or part of the preceding year; and

(b) the reference was related to any matter related to the carrying on of any activities authorised or regulated by the Licences that grant a particular authorisation or combination of authorisations).

(10) For the purposes of this condition, "year" means a period of 12 months beginning on 1st April.

10. Revocation

(1) A licence subject to these conditions may be revoked by notice served on the Licensee by the Authority, in accordance with a general authorisation given by the Secretary of State, in any of the circumstances specified in paragraph (2).

(2) The circumstances mentioned in paragraph (1) are—

(a) the Licensee has consented to the revocation;

(b) any information provided by the Licensee to the Secretary of State, an inspector within the meaning of section 86 of the Act (enforcement of water quality), the Authority or a relevant undertaker was false or misleading in a material particular;

(c) there has been, is or is likely to be such a contravention by the Licensee of any principal duty, not being a contravention in respect of which a notice has been served under section 19(3) of the Act (notice that one of the exceptions to the duty

- to enforce applies), as is serious enough to make it inappropriate for the Licensee to continue to hold its Licence;
- (d) the Licensee has caused or contributed to a contravention by a relevant undertaker of any principal duty and the Licensee's actions or omissions were serious enough to make it inappropriate for the Licensee to continue to hold its Licence;
- (e) there has been, is or is likely to be such a contravention by the Licensee of the provisions of any enforcement order which—
- (i) is not for the time being the subject-matter of proceedings brought by virtue of section 21(1) of the Act (proceedings challenging the validity of an enforcement order); and
 - (ii) if it is a provisional order, has been confirmed, as is serious enough to make it inappropriate for the Licensee to continue to hold its Licence;
- (f) the Licensee has failed to pay the whole or part of any fee due under condition 9 above and—
- (i) the Authority demanded payment of that sum by notice served on the Licensee at least 14 days after it became due; and
 - (ii) any part of that sum remained unpaid 14 days after service of that notice;
- (g) the Licensee has failed to pay the whole or part of any penalty (together with any interest) imposed on it under section 22A(1) or (2) of the Act (penalties) and—
- (i) the enforcement authority demanded payment of that sum by notice served on the Licensee after that sum became recoverable as a civil debt under section 22F of that Act (recovery of penalties); and
 - (ii) any part of that sum remained unpaid for three months after the service of that notice;
- (h) the Licensee has failed to comply with the terms of—
- (i) any order of the court under section 34 of the Competition Act 1998 (enforcement of directions); or
 - (ii) any relief or remedy granted by the court under sections 94 (rights to enforce undertakings and orders), 95 (rights to enforce statutory restrictions) or 167 (rights to enforce undertakings and orders) of the Enterprise Act 2002;

- (i) the Licensee or any director, manager, secretary or other similar officer of the Licensee has been convicted of an offence which the Authority considers is material to the activities authorised by the Licence;
- (j) any director, manager, secretary or other similar officer of the Licensee has been declared bankrupt or is disqualified under the Company Directors Disqualification Act 1986;
- (k) the Licensee has not supplied any water or sewerage services using the supply systems of any undertaker during a period of at least three years beginning on or after the date on which its licence came into force and ending on the date on which notice is served on the Licensee in accordance with condition 11 below;
- (l) the Licensee is or is likely to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (definition of inability to pay debts);
- (m) the Secretary of State has petitioned for the winding up of the Licensee under sections 124(4) and 124A of the Insolvency Act 1986 (petition for winding up on grounds of public interest);
- (n) a voluntary arrangement has been proposed in relation to the Licensee under section 1 of the Insolvency Act 1986 (those who may propose an arrangement) other than on terms which have been approved in writing by the Authority;
- (o) the Licensee has entered into a scheme of arrangement under Part 26 of the Companies Act 2006 (Arrangements and Reconstructions other than on terms which have been approved in writing by the Authority);
- (p) a receiver has been appointed in relation to the whole or a material part of the Licensee's assets or undertaking;
- (q) an administrator of the Licensee has been appointed under Schedule B1 of the Insolvency Act 1986 (administration), and the administrator cannot perform his functions so as to rescue the Licensee as a going concern on terms which have been approved in writing by the Authority;
- (r) a resolution has been passed for the winding up of the Licensee; or
- (s) a winding up order has been made in relation to the Licensee by a court of competent jurisdiction.

(3) In this condition—

“principal duty” means—

- (a) in relation to a water undertaker, a requirement imposed on the water undertaker by section 37 of the Act (general duty to maintain water supply system etc);
- (b) in relation to a sewerage undertaker, a requirement imposed on the sewerage undertaker by section 94 of the Act (general duty to provide sewerage system); and
- (c) in relation to the Licensee, any condition of its Licence or any statutory requirement imposed on it in consequence of its Licence; and

“receiver” includes an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 (expressions used generally).

11. Notice of revocation

(1) A notice of revocation under condition 10(1) above must specify—

- (a) the matters relied on by the Authority to justify the revocation;
- (b) the date on which the revocation is to take effect; and
- (c) if the Authority relies on urgency as a reason for abridging the 30 day period mentioned in paragraph (2), the reasons for this.

(2) Except in the case of urgency or where a notice of revocation is served in the circumstances set out in condition 11(3) or where the Licensee has consented under condition 10(2)(a) above, the date on which the revocation takes effect must not be less than 30 days after the date on which the Authority serves the notice under condition 10(1) above.

(3) The Authority may serve a notice of revocation in respect of the circumstances set out in condition 10(2)(l) to (s) above which will take effect 24 hours after the date and time on which the Authority serves the notice under condition 10(1) above.

(4) At any time after the service of a notice under condition 10(1) above and before the date on which the revocation takes effect, the Authority may by further notice served on the Licensee vary or withdraw the notice under condition 10(1) above.

(5) If in case of urgency a notice of variation under paragraph (3) abridges the notice period given by the notice under condition 10(1), the notice of variation must specify the reasons for this.

PART B –CONDITIONS APPLICABLE TO WATER SUPPLY AND SEWERAGE LICENCES WITH RETAIL AND RESTRICTED RETAIL AUTHORISATIONS

1. Market Arrangements Code

Obligations in relation to the Market Arrangements Code

(1) The Licensee must:

- (a) be a party to and comply with the Market Arrangements Code; and
- (b) take all steps within its power to ensure that the Market Arrangements Code remains a document that:
 - (i) is designed to facilitate principles set out in Schedule 1 of the Market Arrangements Code (the “MAC Principles”);
 - (ii) conforms to the requirements of paragraph (2) of this condition in relation to the modification of the Market Arrangements Code; and
 - (iii) makes express provision for the matters described in paragraph (3) of this condition.

Modification of the Market Arrangements Code

(2) The Market Arrangements Code shall contain procedures for its own modification (including procedures for the modification of the modification procedures themselves) which shall ensure that:

- (a) change proposals for the modification of the Market Arrangements Code may be made by any member of the Panel constituted under the Market Arrangements Code pursuant to paragraph 3(d) of this condition (“**the Panel**”), by the Authority and by such other persons or bodies as may be set out in the Market Arrangements Code;
- (b) every change proposal is brought to the attention of all parties mentioned in or pursuant to paragraph (a) above;
- (c) any and all representations made in respect of a change proposal are able to be properly considered by the relevant decision makers;
- (d) the question of whether any change proposal better facilitates the achievement of the MAC Principles is able to be properly evaluated by the parties to the Market Arrangements Code;
- (e) change proposals require Authority approval;

(f) change proposals made by any of the parties stated in paragraph (a) which the Authority reasonably considers are necessary to comply with or implement any Applicable Law are:

- (i) to be accepted into the Market Arrangements Code modification procedures by the Panel;
- (ii) where they are raised by a person other than the Authority, not to be withdrawn without the Authority's prior consent; and
- (iii) to proceed in accordance with any timetable(s) directed by the Authority in relation to the raising of a change proposal, the completion of relevant procedural steps and the implementation of the change proposal.

(g) a final report is prepared including:

(i) a proposed implementation date either:

A. in accordance with any direction(s) issued by the Authority under paragraph (2)(h); or

B. where no direction has been issued by the Authority under paragraph (2)(h), that would enable any proposed modification to take effect, as soon as reasonably practicable after the decision to implement it has been reached, taking into account the complexity, importance, and urgency of that modification and the most efficient timing for implementing the modification; and

(ii) a summary of and copies of all submissions made in respect of the change proposal;

(iii) an assessment of the extent to which the change proposal would better facilitate achieving the MAC Principles and a detailed explanation of the reasons for that assessment; and

(iv) an assessment of any potential impact on, or consequential amendment to, any other Retail Market Code.

(h) the proposed implementation date may be altered with the consent of or as directed by the Authority;

(i) parties to the Market Arrangements Code are able to consider and comment upon the change proposal report prepared in accordance with paragraph (g) and in

particular whether the change would, as compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles;

(j) the Panel, having regard to whether the change would, as compared with the existing provisions of the Market Arrangements Code, better facilitate the achievement of the MAC Principles, makes a recommendation to the Authority to approve or reject the proposed modification;

(k) completion of each of the procedural steps outlined in this paragraph (2) to the extent that they are relevant, is in accordance with any timetable(s) directed by the Authority;

(l) the change proposal report prepared in accordance with paragraph (g) (and submitted to the Authority pursuant to the procedures described in paragraph (g)) can be revised and resubmitted upon, and in accordance with, a direction issued to the Panel by the Authority where the Authority determines that it cannot properly form an opinion on the approval of the change proposal;

(m) any proposals to modify the Market Arrangements Code must be designed to better facilitate the achievement of the MAC Principles; and

(n) no modification of the Market Arrangements Code may be made unless the Authority, having had regard to the MAC Principles, directs the Licensee, in conjunction with every other Licensee and Appointee, to modify the Market Arrangements Code in such manner as is stated in that direction.

Contents of the Market Arrangements Code

(3) The Market Arrangements Code shall make express provision in relation to the following matters:

(a) the creation of an agreement, to which the Licensee, every other Licensee, every other Appointee shall be a party, and which binds the Licensee to comply with the terms of the Market Arrangements Code (the “**MAC Framework Agreement**”);

(b) the referral for determination by the Authority of any dispute arising as to whether a person seeking to be admitted as a party to the MAC Framework Agreement has fulfilled such trading conditions as are set out in the MAC Framework Agreement;

(c) terms that provide for the Licensee and such other parties to the MAC Framework Agreement to be contractually bound by some or all of the provisions of the Market Arrangements Code;

(d) arrangements for establishing and maintaining a Panel which is to be responsible, by way of such proceedings as may be set out in the Market Arrangements Code, for the governance and administration of the Market Arrangements Code and whose members are to be required as a condition of their appointment or election to act independently and not as delegates;

(e) arrangements for the establishment and funding at all times of a body to perform the role of Market Operator fulfilling the functions set out in the Market Arrangements Code; and

(f) a process by which the Panel can make recommendations to the Authority in relation to modifications of any code issued pursuant to section 66DA of the Act and/or section 117F of the Act.

2. Customer Protection Code of Practice

(1) The Licensee must comply with the Customer Protection Code of Practice.

(2) The Customer Protection Code of Practice shall contain the procedure for its own modification.