

MEMORANDUM OF UNDERSTANDING BETWEEN THE WELSH MINISTERS AND THE WATER SERVICES REGULATION AUTHORITY

Explanatory Note

This Memorandum of Understanding contains an agreement between the Water Services Regulation Authority (Ofwat) and the Welsh Ministers and sets out the principles and values which underlie the relationship between the two parties.

The Memorandum is required under section 52(4) of the Water Act 2003 (the Water Act). The Water Act places a duty on the two parties to make arrangements with each other with a view to promoting:

- (a) co-operation and the exchange of information between them; and
- (b) consistency of treatment of matters which affect both of them.

This Memorandum will be laid by the Welsh Ministers before the National Assembly for Wales.

This Memorandum will also be laid by the Secretary of State before each House of Parliament as required by section 52(8) of the Water Act.

MEMORANDUM OF UNDERSTANDING

Introduction

1. This Memorandum of Understanding sets out the principles that guide relations between the Office for Water Services (“Ofwat”), and the Welsh Ministers.
2. This Memorandum is required by section 52(4) of the Water Act 2003, to secure effective working arrangements between the parties. The Memorandum is not intended to cover every detailed aspect of the relationship between the parties. Rather it is a statement of principles which will guide relations between them to ensure sufficient arrangements are in place to enable them to discharge their respective responsibilities effectively and to avoid duplication of effort.
3. This Memorandum is not legally binding but is to serve as a working document which will be subject to review in the light of operational practice.

Review of Memorandums

4. Amendments to this Memorandum may be made at any time by agreement of both parties. In addition, this Memorandum will be reviewed at three yearly intervals and updated as necessary, in light of experience of its operation in practice.

Roles and Responsibilities

5. Ofwat is the economic regulator for the water and sewerage industry in England and Wales¹. Ofwat is responsible for economic regulation of the water and sewerage sector, acting independently of the industry, UK Government and Welsh Assembly Government and other stakeholders, while working within the government policy framework. Ofwat will ensure that the Welsh Assembly Government is informed of Ofwat’s views on issues that affect policy on the water and sewerage sector. This is in the context of a regulatory framework that includes the Environment Agency Wales with responsibility for the environment, the Drinking Water Inspectorate responsible for drinking water quality and the Consumer Council for Water representing the interests of consumers.
6. The Welsh Assembly Government provides the strategic direction for water policy and sets the regulatory framework for the water and sewerage sectors in Wales pursuant to the Water Industry Act 1991. The Welsh Assembly Government’s core objectives are to ensure access to safe drinking water, affordable maintenance of water and sewerage services and compliance with statutory obligations. The Welsh Assembly Government will ensure that Ofwat

¹ For the purposes of this Memorandum “Wales” means water and sewerage company areas wholly or mainly in Wales.

is kept consulted on decisions that affect the water and sewerage sector in Wales.

7. The Minister for Environment, Sustainability and Housing works closely with the UK Government towards the development and delivery of policy to the water and sewerage sectors and ensuring that customers in Wales are central to that delivery. That policy sets the framework within which Ofwat conducts its duties.
8. In agreeing this Memorandum, the Welsh Assembly Government fully recognises the independence of Ofwat and Ofwat recognises the legitimate interests and responsibilities of the Welsh Assembly Government in the overall work of Ofwat.
9. The Welsh Assembly Government will from time to time issue Ofwat with statutory guidance on how it should contribute to the Welsh Assembly Government's social and environmental policies. Ofwat will have regard to this guidance when it carries out its functions as the economic regulator. Ofwat sets out in its annual report how it has contributed to the delivery of the policies set out in the guidance.

Working Relationship

10. We will seek to build on the good working relationship that already exists between us by:
 - having an open and constructive working relationship;
 - having regard to the different policy positions on water between the Welsh Assembly Government and UK Government;
 - working closely together at all levels, both in policy, and in strategic issues of importance;
 - undertaking bilateral meetings between Ofwat and Welsh Assembly Government officials;
 - agreeing meetings between the Chief Executive of Ofwat and the Minister for Environment, Sustainability and Housing when appropriate;
 - respecting each other's views, where different, after discussion to ensure proper understanding of the reasons for any such differences;
 - having a "no surprises" policy, based on notifying each other well in advance where possible of significant announcements and developments in policy;
 - identifying the areas of regulatory interaction and setting out what each expects of the other;

- minimising duplication of activity wherever possible; and
- informing stakeholders about our relationship so as to reduce regulatory uncertainty.

Co-operation

11. We affirm our commitment to working together, where appropriate, on matters of mutual interest. We recognise the importance of co-operation across a range of areas, whilst at the same time maintaining Ofwat's statutory independence.

Treatment of Matters of Common Interest

12. We are committed to the principle of good communication with each other on areas of mutual interest on a "no surprises" basis. This will be done through regular liaison and regular discussion on relevant issues. The intention is not to constrain the discretion of either party but to allow each to make representations to the other in sufficient time for those representations to be considered.

13. Against this background, and subject to the Freedom of Information Act 2000 and Environmental Information Regulations 2004, and other constraints (e.g. commercial confidentiality, price sensitive matters, etc) in confidence where necessary, we will:

- (i) give appropriate consideration to the views of others and explain where we do not agree;
- (ii) have regard to advice from the other and act on it, as appropriate.

14. We will invite each other to formal press conferences and other public events hosted by one, but of interest to both.

15. Where appropriate, we will liaise, involve and keep each other informed as necessary on the drafting of key documents where relevant to the other party's functions.

Exchange of Information

16. We will aim to minimise the burden placed on water and sewerage undertakers and licensed water suppliers ("the Companies") in providing information to public authorities. We will aim to avoid duplication by sharing publication schedules and plans to collect information from Companies. Where appropriate we will consult each other before considering an approach to Companies to determine whether the required information is already held in a suitable form by the other party.

17. We will provide information in our possession that may be reasonably requested by the other subject to necessary confidentiality constraints and safeguards or any relevant bars on disclosure.
18. We will take account of each other's statutory responsibilities in relation to the disclosure of sensitive information.
19. We will refer back to the originating party any requests for information we hold but did not collect and which we are aware is confidential in nature. We will make each other aware of any significant disclosures to third parties of information we have shared with each other.

Disputes

20. If there is a dispute about the interpretation and/or operation of the Memorandum which cannot be resolved between us at working level, the Chief Executive of Ofwat and the Director of the Department for Environment, Sustainability and Housing in the Welsh Assembly Government will discuss the matter and decide what action to take.

Publication of Memoranda

21. The Welsh Ministers will lay this and any revised memoranda before the National Assembly for Wales. The Welsh Assembly Government will also forward this and any revised memoranda to parties covered by section 52(4) of the Water Act (and not party to this memorandum).
22. The Secretary of State will also lay this and any revised memoranda before Parliament.
23. An up to date version of this Memorandum will be published on Ofwat's website (www.ofwat.gov.uk) and on the Welsh Assembly Government's website (www.wales.gov.uk) Hard copies will also be available on request from Ofwat on 0121 625 1399 and from the Welsh Assembly Government on 029 2082 5509.

Signed by:



..... **for the Water Services Regulation Authority**

(Marian Spain)

Date: 10 December 2010



..... **for the Welsh Ministers**
(Claire Bennett)

Date: 10 December 2010