



## Roles, responsibilities and governance of the Open Water programme and transition post May 2015

### Introduction

The [Water Act 2014](#) enables the creation of a new market that will allow all non-household customers in England to choose their supplier of water and wastewater retail services by April 2017.

In 2012, the UK Government established a group of key stakeholders, including us (the 'High Level Group'), to help prepare for a new retail market and other market reforms. The High Level Group (HLG) established the 'Open Water' programme to deliver this work.

In December 2013 the HLG established Open Water Market Limited (OWML) – a company limited by guarantee and with an appointed board of directors – as the entity to take forward and govern that programme of work.

In February 2015, our Chief Executive Cathryn Ross [wrote](#) to market participants setting out some changes to the organisation and governance arrangements for the work associated with opening the retail market to provide choice and benefits to all non-household customers from 2017. In particular, the letter highlighted that:

- we had not been able to agree a partnership arrangement with the Water Industry Commission for Scotland (WICS); and
- we expected Open Water Markets Ltd (OWML) to continue ideally until the end of May 2015<sup>1</sup>.

The letter also highlighted that:

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<sup>1</sup> OWML's board has agreed to move forward on that basis subject to sufficient resources and funding being made available and their being a clear plan for transition beyond the end of May

- the allocation of roles and responsibilities post transition was subject to further discussion and engagement; and
- we recognised the need to inform stakeholders of the new arrangements as soon as possible.

This note has been prepared in consultation with Defra, OWML and Market Operator Services Limited (MOSL) and seeks to provide clarity on the roles and responsibilities for market participants and other stakeholders as the programme progresses and work transitions from OWML to Ofwat and MOSL.

We expect a phased transition to the work of the programme over to Ofwat and MOSL. The precise timing of that transition is still under discussion and is to a great extent dependent upon the readiness of MOSL but:

- some elements of the programme work have already transferred ahead of the end of May, including in particular the procurement activities;
- some elements of the programme are likely to transition as soon as possible in June, including the programme management arrangements, work on market transition, work on the enduring market operator and potentially work on systems delivery; and
- the remaining elements are likely to transition later in July, including work on codes and market processes.

We are working hard to ensure that the transition can be as swift and smooth as possible whilst minimising the risks the delivery of the new arrangements. We will be writing to MOSL to seek assurance on the timetable before it is finalised.

## Roles and responsibilities post transition

There are four key groups responsible and accountable for the delivery of various activities that will be needed to open the non-household retail market by April 2017 as part of the overall Open Water programme. These will be set out in the [integrated programme plan](#) which sets out how each of these parties will need to work together to deliver the new retail market. We have recently updated that plan to reflect the transition arrangements as we currently understand them and changes are explained in the change controls log.

The four groups we see as forming the core of the Open Water programme post May are as follows.

1. **Government** (including the UK Government, represented principally by **Defra**, and the **Scottish Government**).

2. **Economic regulators** (including **Ofwat** as the economic regulator for water and wastewater services in England and Wales and the Water Industry Commission for Scotland, **WICS**, as the Scottish regulator).
3. **Market participants collectively**, including new entrants, holders of existing retail licences and both incumbent wholesale and retail businesses. These participants will seek to ensure that the new arrangements are open, transparent, and do not create unnecessary barriers to entry. Market participants are currently represented by **Open Water Market Ltd** and we expect that, following the transition of work, market participants will continue to be represented through **Market Operator Services Ltd**, with a balanced board and governance arrangements that give equal voices to incumbents and new entrants.
4. **Market participants individually** (as well as operating collectively to ensure delivery of the central market operator role and systems) will have market readiness work to carry out within their own organisations, and important decisions to take regarding their proposed approach and strategy towards the new market.

Each of these parties has agreed to work together to ensure the collective delivery of choice for all non-household customers by April 2017:

- in line with the desires of customers; and
- in support of the benefits that this can bring in terms of keener prices and service improvements.

Each party has agreed to work collectively as part of single integrated programme to deliver their respective activities in support of these benefits even though they remain independent with their own jurisdictions, boards, governance and decision making structures.

There are many other critical stakeholders and interested parties who we expect to play a key role in the development of the new market arrangements, not least customers (and their representative groups such as the Consumer Council for Water (CCWater) for whom the market arrangements are being designed and in whose interests we must collectively ensure they work.

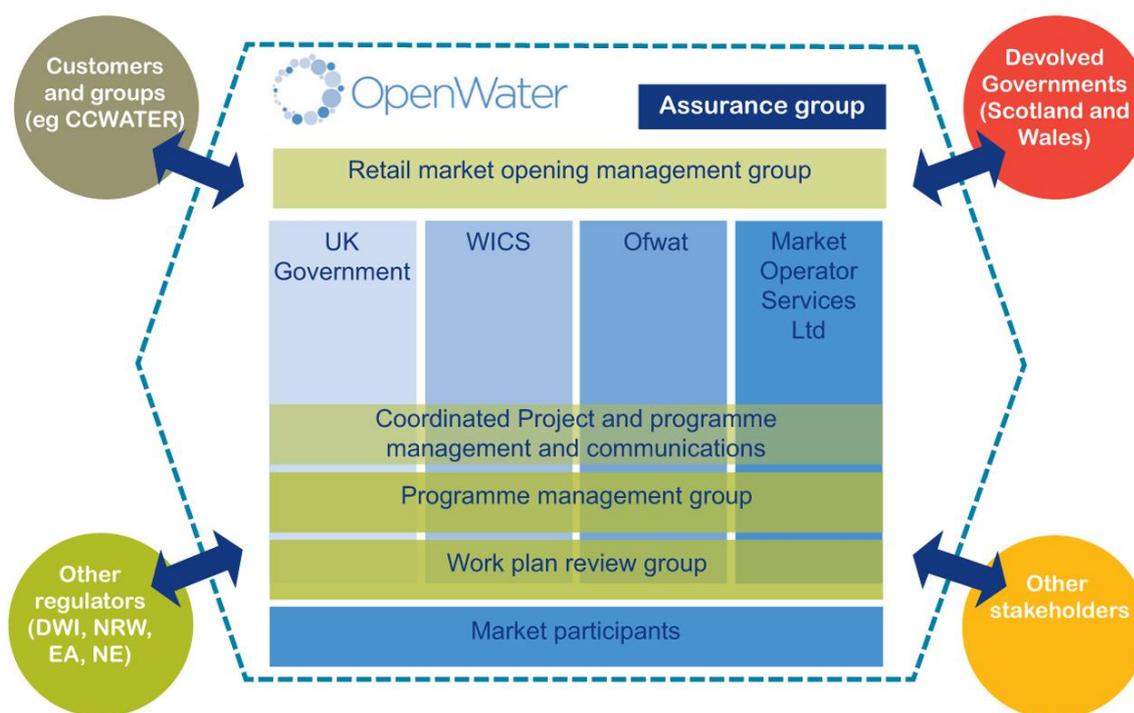
Other regulators will also need to play a key role in relation to their roles and statutory functions in ensuring that the new arrangements continue to safeguard public health and the environment. This includes:

- the Drinking Water Inspectorate (DWI);
- the Environment Agency (EA);

- Natural Resources Wales (NRW); and
- Natural England (NE).

This wider group of interested parties will be engaged, along with market participants, Government and regulators through the Assurance Group which will provide input to Defra to support the decision the Secretary of State will need to take for the market to ‘go live’.

**Figure 1: Governance diagram of ‘core’ Open Water programme**



## 1. Government

The UK Government has overall policy responsibility for retail market reform in England, including over the shape, direction and pace of reform and its inter-relationship with the rest of the policy and regulatory framework for the water sector. The Secretary of State will need to confirm the April 2017 date for the new market to ‘go live’, a decision that will need to be based on confidence from a comprehensive assurance framework.

The UK Government will therefore have responsibility for:

- setting the policy and legislative framework within which the retail market is implemented;

- ensuring that implementation of retail competition is appropriately aligned with the wider legislative, regulatory and policy landscape in which the water sector operates;
- issuing charging and other guidance to Ofwat;
- co-ordinating the phased commencement of the relevant sections of the Water Act 2014;
- delivering the necessary secondary legislation, for example the regulations that will enable retail exit and those relating to appeals against a decision by Ofwat on the statutory codes;
- signing off the new market arrangements as they are prepared by other parties, such as the new water and sewerage supply licences (WSSL) and statutory codes; and
- taking the decision to 'go live'.

The legal framework governing water and wastewater services in Scotland is entirely separate and devolved and there is already a competitive market for water and wastewater retail services in Scotland. Both the Scottish and the UK Governments have a shared objective in a market that works for customers on both sides of the border where the market arrangements are as seamless as possible for the mutual benefits of customers and the environment in both jurisdictions.

The Water Act 2014 covers England and Wales. However, the Welsh Government has decided for the time being to not extend the existing competition arrangements any further for the customers of companies located wholly or mainly in Wales.

## **2. Economic regulators**

The economic regulators each have an important role in implementing the new arrangements.

With a successful retail market already in place in Scotland, WICS has a key role to play in enabling the arrangements in England to learn the lessons from their experience and that the new arrangements maximise interoperability between the two markets for the mutual benefit of customers across both jurisdictions. In particular, the Act enables the two regulators to recognise each other's licensees with a view to delivering the opportunity for retailers to operate efficiently and effectively across the border, enabling customers to contract with a single retailer in both jurisdictions.

Ofwat has a core role in implementing the new market arrangements and the new legislation confers certain key tasks to us. In particular we will be responsible for the following activities.

- Developing charging 'rules' following the guidance from the UK and Welsh Governments, including any rules that relate specifically to the new market arrangements.
- Developing the new WSSLs and any necessary changes to the Instruments of Appointment of existing incumbent companies.
- Developing an interim supply code and consulting on the final market documents (or codes). We expect to receive a final, base-lined set of market documents (Market Arrangements Code and Wholesale Retail Code) from MOSL in the summer (see below). These documents form the platform for future development, and we will establish an interim code panel as part of the change management governance. We published details of the interim code panel in '[IN15/15: Opening a new retail market for non-household customers – establishing an interim code panel](#)', which we published in April 2015.
- Developing new Guaranteed Service Standards and deemed contracts for non-household customers for the opening of the new market.

In addition to the above points, we have existing regulatory functions. This principally includes:

- setting price limits for appointed, incumbent companies, including any reopening/resetting of non-household retail price controls in 2016 ahead of the opening of the retail market; and
- acting as the relevant competition authority for the sector investigating and, where appropriate, taking enforcement action against any breaches of competition law either ahead of or after market opening.

All of the above activities are already in the integrated programme plan and are not changing as a result of the transition. However, we do expect some of the OWML responsibilities to transfer across to us. These include the following.

- **Programme management co-ordination and engagement** – we must also ensure a co-ordinated approach to programme management and engagement.
- **Customer engagement** – as above, all engagement activity across the programme will need to be co-ordinated through a central group made up of all the core programme participants
- **Establishing an interim code panel** – we have already published details on this issue but, following transition we intend to establish an interim code panel to recommend changes to the codes that have been published as part of the market architecture plan version 3 (MAP3).

### 3. Market participants collectively

There will be a number of market participants involved in the new retail market arrangements, including incumbent appointed companies wholesale and retail operations and new entrant retailers, with the potential for additional new entrants to become licensed ahead of 2017. In addition, in the Scottish retail market there is Scottish Water (a wholesaler) and Business Stream (incumbent retailer) and a range of new entrants.

We all want a set of market arrangements that are designed as far as possible by the market participants. This will help to ensure that the market arrangements work most effectively for and are acceptable to market participants and hence that the market operates effectively for customers. This was why we all supported the establishment of OWML and have latterly supported the establishment of MOSL.

OWML has wide membership across market participants and, with the critical input from its members, has made an invaluable contribution to progression of this work and without its help and input the target market opening date of April 2017 would be less achievable. OWML is currently taking forward a range of activities primarily related to the following key deliverables for the opening of the retail market:

- the development of the market documents (including the wholesale/retail code, the market arrangements code and wholesale contracts);
- the development of requirements to enable the procurement of a central system to handle customer registration, switching and financial settlement in the new market and associated procurement plans;
- transition arrangements setting out the key work and timescales that market participants will need to undertake to open the market on time and any associated requirements to, for example, test new systems, etc; and
- in addition to the above items, OWML has procured an assurance framework that will set out the checks and tests that will need to be undertaken to ultimately give comfort to the Secretary of State that the new arrangements are in place and that the market can open in April 2017. This framework has been developed and was published within the [MAP 3 appendices](#) on the 11 May 2015.

We expect most of the above deliverables to be substantively complete by early July, either as part of the package of documents consulted upon as part of MAP 3 or separately. Around this date we expect OWML to complete the transition of its remaining work to MOSL. The exact timing of the transfer of work into MOSL depends on it being capable of accepting the work and managing it accordingly under a formal governance framework.

Beyond the transition of work, other programme members will need to remain sufficiently satisfied that the governance of MOSL is such that it continues to be viewed as a 'private' entity (in line with [HM Treasury guidance](#)). This is likely to be the case as long as:

- the 'control' of MOSL's board is private, there is a majority of private members on its board and no special rights of any public board members;
- that the board members are not appointed by any 'public' organisations;
- there is no public funding going into MOSL and there is no levy/tax requirement for parties to fund MOSL; and
- there is no public liability for MOSLs actions.

MOSL is now focused on effecting a transition from its initial establishment to one based on its newly agreed Articles and governance arrangements that have the support of market participants and which meet the criteria defined by Defra, HM Treasury, Ofwat and WICS.

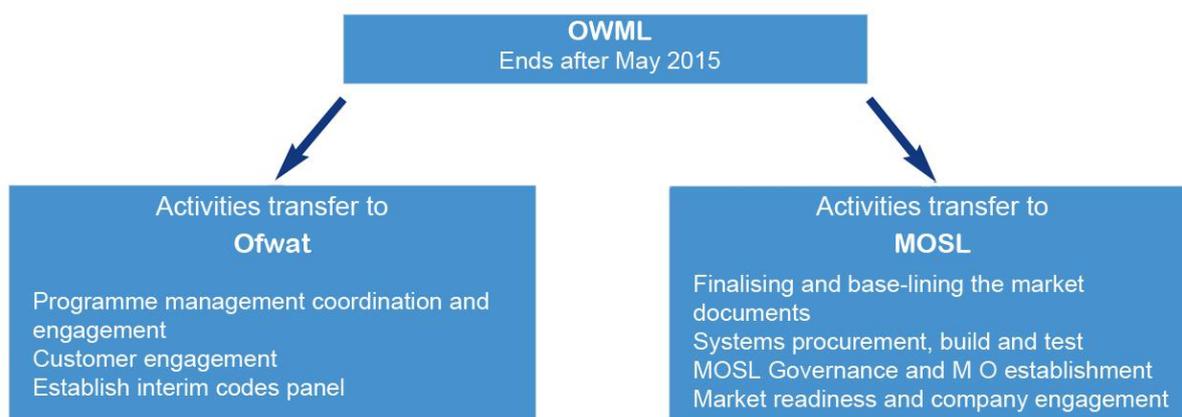
MOSL is agreeing membership from market participants on a voluntary basis. We would encourage companies to join, particularly new entrants to the sector to help ensure that the membership and governance of the entity is balanced and that its work will result in an effective and open set of market arrangements. The funding of MOSL is voluntary and not regulated by Ofwat. We are confident that the changes to the governance arrangements and other activities to resource MOSL will mean that it will be ready to accept the work from the Open Water programme post transition and this will include the following.

- Finalising and base-lining the market documents that will be set out in the MAP 3 consultation: Some amendments may be needed to reflect consultation responses as well as any technical amendment as part of the procurement process. MOSL will therefore pick up the market documents and finalise them with the input of the new interim code panel ahead of passing them to Ofwat at end September.
- Systems procurement, building and testing: MOSL will take forward the procurement of the central systems necessary to facilitate the registration and switching of customers and financial settlement in the market. The systems will need to deliver the requirements of the market documents and other necessary interactions for example with the CMA, hence the need to keep these two strands of work together.
- MOSL Governance and MO establishment: MOSL is in the process of establishing a new board and management roles, and will have to consider how it will efficiently transform itself from an implementing body to the expected enduring market operator from April 2017. With the expectation of

MOSL becoming the enduring market operator (and that would be the preference of all of the core programme members), this will still be subject to further discussions with HMT and the Office of National Statistics (ONS) about the governance of the enduring MO and, in particular the code governance arrangements and the enduring code panel.

- Company engagement: MOSL will need to take forward certain engagement activity with market participants to fulfil the roles and responsibilities that it is being allocated. This includes, for example, any further workshops with market participants in relation to the finalisation of the codes. We also expect MOSL to make use of the assurance framework to satisfy it, and others, that its work will effectively and efficiently contribute to the opening and operation of the non-household customer market.

**Figure 2: Proposed transition arrangements**



#### **4. Market participants – individually**

Market participants have an important role with continued engagement in the development of the market architecture, including participation and development of code changes as code signatories, and in some cases panel representation.

It will be necessary for companies to engage with both Ofwat and MOSL to ensure that they are taking on the necessary actions to be ready for market opening and compliant with the new market arrangements. These activities will form significant internal programmes spanning technical, regulatory and business transformation.

#### **Collective programme activities**

There are also a range of activities on which there will need to be a co-ordinated approach across the programme, including the following.

- **Project and Programme Management (PPM) activities and communications** – To date, different organisations across the programme have undertaken their own programme planning, risk and issue management and engagement. This will need to continue going forward given the split responsibilities for delivery across the different organisations but it is clear that there needs to continue to be a single overall integrated programme plan and co-ordinated engagement arrangements across the various parties to ensure a joined-up approach.

Following the transition, we expect to be accountable for this activity even though responsibility will be shared across the programme participants with parties retaining some responsibility for their elements of the integrated programme plans and engagement and participating in the co-ordinated planning and engagement groups including the Work Plan Review Group (WR Group), which we expect to be chaired and managed by MOSL and the Programme Management Group (PM Group) which will be chaired and managed by Ofwat.

- **Assurance framework** – OWML has procured advice on developing an overall assurance framework for the programme, this will be owned by the Retail Market Opening Management Group. Once this is in place it will likely result in various assurance aspects being allocated to different parties pursuant to that framework. The assurance framework has been published alongside MAP 3 and that assurance will become a key part of the work of the new Assurance Group.

We have separately published '[Open Water programme – roles of different organisations for individual pieces of work](#)' (a programme RACI), which sets out:

- the entity that must deliver a particular product or piece of work ('responsible');
- the entity that is accountable for that product/piece of work and the ultimate decision maker ('accountable')
- those entities/parties that are consulted in the finalising of certain products or pieces of work ('consulted'); and
- those entities/parties that are informed about the outcomes of particular pieces of work ('informed').

This can be found on the Ofwat website.

## Next steps

All the programme parties are committed to implementing the above changes in a sensible and managed way as quickly as possible. Critically we must ensure that the momentum of this work can continue to enable the market to open in April 2017. An important aspect of this is agreeing the overall budget for this work, we are currently working through the cost implications of this work and will provide further information as the transition dates are finalised.

We hope that this note helps to clarify the roles and responsibilities within the programme following the transition of work from OWML to Ofwat and MOSL and we look forward to the continued support to deliver on the UK Government's ambition of choice for all non-household customers by April 2017.