

# Information notice

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## Proposed governance arrangements of Open Water

### Background

The Water Act 2014 includes provisions to allow all non-household customers in England to choose their supplier by April 2017.

The Open Water programme was established to implement the necessary market architecture to deliver the ambitions of the Water Act. Open Water Market Limited (OWML) is a company limited by guarantee that was established in December 2013 as the entity to take forward and govern that programme of work. The Open Water programme and OWML are overseen by the High Level Group (HLG).

### Recent developments

As part of our [consultation](#) to amend companies' licences, we recently announced a new approach to taking forward the work of the Open Water programme. This would see OWML continuing to deliver its current programme of work up to the end of 2014 before this work formally moves into a ring-fenced programme taken forward by Ofwat from January 2015.

The decision for this change has the full support of the HLG and the OWML Board.

The timing of the transition has been determined so that it fits within the work streams OWML is currently undertaking. This will enable OWML to continue to do 'business as usual' until the end of the year. It will then be retained as a non-active company.

As part of the ongoing dialogue with companies about the proposed way forward, we have been asked to confirm the governance arrangements for the next phase.

The rest of this information notice sets out these proposed governance arrangements.

### HLG

The HLG's steering role will continue unchanged, both:

- during the period up to the end of the calendar year when we expect OWML to be wound down; and
- in the new year when the programme formally becomes part of Ofwat.

The HLG retains oversight of the wider programme to deliver the Water Act reforms, including upstream arrangements, although its immediate focus has been on the arrangements for the new retail market because of the April 2017 date for market opening.

### OWML governance for 2014 and beyond

When OWML was set up at the beginning of 2014, we planned three phases. The initial governance arrangements were intended to be interim arrangements for phase 1 only, ahead of a process to elect industry representatives to the Board for phase 2.

Decisions about the governance of OWML are a matter for the OWML Board and the members of OWML, but as there are now only five months left until the end of the year when the programme will transfer to Ofwat, we expect the existing governance arrangements will continue until then. So the Board membership of OWML would continue as it is currently constituted until the end of 2014. This would provide continuity for the rest of this year

This is a formal document that alerts our stakeholders to a change in the way that we regulate the water and sewerage sectors in England and Wales.

and minimise disruption to delivery.

Similarly, the articles of OWML are a matter for its Board and members but again, we understand that the articles of association are likely to remain the same until the end of the calendar year.

Then, as part of the preparation for the transition of the programme into Ofwat, OWML will need to put in place caretaker governance so that the existing OWML Board members can step down when OWML becomes a non-active company. OWML will continue to have some corporate responsibilities beyond December. For example it will need to file its year-end accounts, but we expect these to be wound down to leave a corporate shell at that point.

### **Governance of the Open Water programme once it joins Ofwat in January 2015**

Once the programme joins Ofwat in January 2015, the final governance and decision-making on its work for the English market would be made by Ofwat's Board.

We remain committed to the UK Government's ambition for an Anglo-Scottish market and will be seeking to maximise interoperability between the two jurisdictions, for example by having as far as possible a common set of market code documents. This will continue to require very close working and collaboration between the Ofwat and WICS boards.

We expect the new programme to be:

- ring-fenced within Ofwat's budget to ensure that any monies raised to support the programme are not used for other activities; and
- reported separately in Ofwat's accounts.

This is similar to the approach we take to the reporting of our work on the Thames Tideway Tunnel.

### **New Advisory Panel**

Throughout this important work we want to retain a governance model that is collaborative, inclusive, balanced and allows the market arrangements to be developed in a way that ensures that all market participants and stakeholders can be involved in the market design.

To obtain industry input into, and oversight of, the delivery of the new market arrangements, we propose to set up a new Advisory Panel of industry representatives.

This panel would be set up in the autumn with the elections run and managed by OWML. It would then continue its role after these activities transfer to Ofwat at the end of the year. We expect that allowing the panel to run across both phases will help to ensure a high degree of continuity.

The panel would include representatives from wholesalers and retailers (both incumbents and new entrants). This reflects our commitment to elected representation to:

- ensure balanced input to the design process; and
- encourage learning from this type of elected representation, of which there is limited experience in the water sector.

More details on the proposed longer-term governance arrangements, including the Code Change Panel, will be provided in our market governance consultation document which we will publish within the next month.

### **Role of the Advisory Panel**

We propose that the Advisory Panel members be elected in the autumn, so the panel can begin its role while OWML is still developing the draft market rules and the next version of the market architecture document (MAP).

The Advisory Panel will continue in its role until the initial market codes are issued ahead of market opening, when it will evolve into the Code Change Panel as defined in the initial market codes.

The panel's role would be to review the proposed market arrangements and make recommendations to Ofwat's Board on key aspects of the market design and, in particular, the design of the market and operational codes in England. Final decisions on these issues would continue to be taken by Ofwat's Board.

The panel will therefore not be a decision-making body. If a consensus opinion cannot be reached, the panel's advice should

indicate the different views or concerns.

### Composition of the panel

The panel will be composed of:

- a chairperson, nominated by Ofwat;
- two representatives from incumbent wholesalers (including new appointees and companies wholly or mainly in Wales);
- two representatives from retailers within the incumbent companies;
- two representatives from new entrant retailers;
- two independents with relevant experience appointed by the Chair; and
- a number of non-voting invited observers which should include: Ofwat, WICS and a consumer representative.

We propose that industry representatives on the Advisory Panel be elected using a single transferable vote (STV) process, managed by OWML.

This is similar to the proposed arrangements for electing members of the market operator (MO) Board – see [MAP appendix A3](#), which sets out the draft market rules based on the existing Scottish market code. Paragraph 8.3 details the process for selecting members of the MO Board.

For each of the categories on the panel, relevant companies would be invited to nominate individuals. If more nominations are received than there are places on the panel, an STV process would be used to elect the panel members. Under this process, nominated candidates would be ranked in the order of preference by voting companies.

Once elected, the role of the panel members would not be to represent their own companies but they would be elected on a constituency basis to further the effectiveness of the market in line with the principles set out in the market codes.

In general, we would expect members of the Advisory Panel serve an 18-month term with the possibility of re-election at the end of that term. This is in line with the arrangements in other sectors, where members of similar panels usually serve terms of between one and two years. However, we would expect the initial terms to be staggered to include terms of one year, 18 months and two years. This will help ensure some continuity in the panel membership.

### Next steps

We plan to publish a consultation document setting out our proposals for longer-term market governance arrangements (that is for the period when the market is

## More information

[Consultation on Ofwat's section 13 proposal to modify the licences of appointees in England and Wales – condition R1](#)

Open Water [website](#)

IN 14/03, 'Update on Open Water funding, resources and governance

Markets [web pages](#)

2014 price review [web pages](#)

active) in the next month. This will include more details about the enduring Code Change Panel.

In parallel, further work will be needed to define the transition arrangements and OWML will begin the nomination process for members of the Advisory Panel, so that it will be in place in autumn.

### Enquiries

If you have any questions about anything in this information notice, please send them to [ruth.gibson@ofwat.gsi.gov.uk](mailto:ruth.gibson@ofwat.gsi.gov.uk).

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