

# Information notice

IN 16/01 March 2016

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## Expectations for company compliance codes

This information notice clarifies the scope and purpose of our [guidance on compliance codes](#) (our ‘compliance guidance’) to licensed monopoly water only and water and sewerage companies in England and Wales (‘appointed companies’). Under the terms of their licence, each appointed company has to prepare a compliance code that follows our compliance guidance.

### Background

Currently businesses and other non-household customers who use more than five million litres ([megalitres or MI](#)) and whose premises are supplied with water using the supply system of a water company based wholly or mainly in England, and those using more than 50MI of water and whose premises are supplied using the supply system of a water company based wholly or mainly in Wales are able to choose their supplier of water retail services.

From April 2017 the Water Act 2014 will remove the consumption limit and allow approximately 1.2 million businesses and other non-household customers who use the supply system and/or sewerage system of an appointed company based mainly or wholly in England to choose their supplier of water and wastewater retail services.

As part of our ongoing work to open the non-household retail market in April 2017 we recently published [Priority changes to](#)

[Instruments of Appointment and Water Supply Licences for non-household retail market opening – consultation.](#)

This included a proposal to remove the ban on a licensed water supplier (a [Licensee](#)), which is associated with an appointed water company, from trading in that company’s area of appointment (known as the [in-area trading ban](#)).

We recognise that some Licensees have concerns about this proposal and the impact it will have. In particular, given all Licensees will need to take services from appointed companies in order to serve their customers, there are concerns over the possibility of appointed companies giving their associated Licensees preferential treatment in the provision of such services.

This notice sets out our expectations for appointed companies in relation to existing obligations that are in place to ensure a level

playing field in the market for retail services and to prevent any discriminatory behaviour.

## Obligations on appointed companies

Each appointed company in England and Wales has an Instrument of Appointment (**IoA**) which is a form of licence that covers the activities that the appointed company must carry out and the obligations on them when carrying out those activities.

Condition R (Provision of combined and wholesale water supplies) of the IoA sets out obligations on appointed companies in respect of providing a supply of water to Licensees.

Paragraph 7(4)(a) of condition R requires companies to have in place a compliance code which complies with our compliance guidance. We developed our compliance guidance to support the obligations imposed on companies by condition R.

Each appointed company needs to make arrangements (details of which should be contained in its compliance code) to:

- ensure that it is complying with the confidentiality obligations under condition R;
- protect commercially sensitive information received from or in relation to Licensees;
- ensure that transactions between itself and any associated Licensee are at arm's length;
- provide clear information to staff on their individual obligations; and
- ensure that it is carrying out its functions under the water supply licensing (WSL) regime fairly and without discriminating

against or in favour of particular customers or licensees.

**Each appointed company's compliance code should provide enough information to demonstrate it is complying with the relevant obligations under condition R of its IoA.**

Each appointed company must review its compliance code once a year (by no later than the anniversary of the date that we first issued our compliance guidance), but can revise its compliance code at any time particularly where changes have occurred either within the company or to the market framework.

### What our compliance guidance says – key points

#### Arm's length trading

Compliance codes should include details of any related Licensees and should clearly set out the procedures staff are required to follow when handling transactions. It should also include details of how staff should account and charge for services provided to a related Licensee.

#### Obligations about information

Compliance codes should set out how information received from or in relation to Licensees will be handled and provide details of the person or team responsible for this information. It is essential that information an appointed company receives from or relating to a Licensee is not misused or used to gain an unfair commercial advantage. Compliance codes should

therefore set out the procedures in place to prevent this.

In addition, compliance codes should set out procedures for sending information to Licensees.

#### **Other areas:**

- Compliance codes should include details of the training available to staff in relation to areas of compliance.
- We expect each appointed company's compliance code to include a clear statement of their approach to compliance.
- Details of the process for monitoring the effectiveness of the compliance code should be included in the compliance code itself.
- Each appointed company's compliance code should include details of the disciplinary procedures in place for breaches of condition R of the IoA by its staff.

## **Our compliance guidance and our expectations for company compliance codes**

In [Priority changes to Instruments of Appointment and Water Supply Licences for non-household retail market opening – consultation](#) we explained that:

- we will require appointed companies to update and publish their compliance codes to ensure that they will be fully compliant with Ofwat's updated guidance from April 2016. This should ensure that information is only used for the purposes for which it

was obtained, and that sufficient steps are taken to demonstrate that associated Licensees are shown no undue preference;

- the requirement for arm's length trading and no undue discrimination means that any appointed company which provides services to an associated Licensee on a discriminatory basis would be in breach of its IoA; and
- appointed companies must continue to publish access codes that set out arrangements for all Licensees, including associated Licensees.

We have now reviewed our compliance guidance to see if any changes are necessary. After careful consideration we have concluded that **our compliance guidance does not need to change at this time.**

As part of our review we have been pleased to see that a number of companies have published their compliance code on their websites. We support this approach and believe it contributes to our vision for the sector that delivers trust in water. We have encouraged those companies that do not currently publish their compliance codes to do so, or to explain why they believe such publication to be unnecessary.

Although we have not revised our compliance guidance we have written to appointed companies to remind them of their obligations under condition R and to make it clear that they should not, and do not, have to wait until we revise our compliance guidance before they review and, if necessary, update their respective compliance codes. This letter therefore reminds appointed companies that it is **their** responsibility to ensure that their compliance codes meet the changing

requirements of both their businesses and the non-household retail market, and continues to be fit for purpose.

We also expect each company to ensure it is compliant with its obligations under its IoA and our compliance guidance at all times.

In addition to the above, each company should consider how it ensures that it is compliant with its competition law (and any other legal) obligations, and how such obligations relate to matters also covered by their compliance codes.

Compliance is important for all businesses. We recognise, however, that the way appointed companies choose to ensure compliance may reflect their size and circumstances. In our view, the content of each compliance code must therefore reflect each appointed company's particular requirements, structure and operational practices.

We do not think that a standard code can apply in all cases, although certain general features and principles must be included as a minimum in all compliance codes if they are to work effectively, details of which are included in our compliance guidance.

We consider this approach to be consistent with our regulatory model that is framework based and proportionate.

Each appointed company should also consider how it can be transparent regarding compliance with its obligations under condition R and achieve both customers' and other licensees' trust and confidence in its compliance programme. This could include, for example, putting details in the compliance

code about any services it is providing to an associated licensee and the process in place around those interactions to ensure compliance.

We also expect compliance codes to go through an appropriate level of internal approval, for example Board assurance, given the importance of these documents. As a minimum, we would expect all relevant employees of the company, including Board members, to be aware of the compliance code and its purpose.

### **Updating compliance codes - summary**

Each appointed company:

- a) can revise its compliance code at any time and has a responsibility to ensure it is fit for purpose and follows our compliance guidance at all times;
- b) should, if it doesn't already, consider publishing its compliance code or explain to us why it believes this to be unnecessary;
- c) should confirm to us that it has a compliant and up-to-date compliance code in place by 1 April 2016; and
- d) should ensure that its compliance code goes through an appropriate level of internal approval, for example Board assurance.

## Next steps

Although we do not think that our compliance guidance needs to be amended at this time, we will keep this under review. In particular, we will consider whether and how our future work over the summer to open the non-household retail market in April 2017 impacts our compliance guidance. We will also take into account the steps taken by companies in

response to this information notice and any evidence that suggests changes are needed.

In the meantime we have written to appointed companies asking them to confirm to us that they have a compliant and up-to-date compliance code in place. They should do so by 1 April 2016 and send this confirmation via email to:

[FinanceAndGovernance@ofwat.gsi.gov.uk](mailto:FinanceAndGovernance@ofwat.gsi.gov.uk)

## More information

[Priority changes to Instruments of Appointment and Water Supply Licences for non-household retail market opening – consultation](#)

[Guidance on compliance codes](#)

[Our strategic business plan](#)

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA

Phone: 0121 644 7500  
Fax: 0121 644 7533  
Website: [www.ofwat.gov.uk](http://www.ofwat.gov.uk)  
Email: [mailbox@ofwat.gsi.gov.uk](mailto:mailbox@ofwat.gsi.gov.uk)

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