

08/16 Open Water programme update

12 August 2016

Retail Market Opening: transition arrangements – update for market participants

Introduction

The Open Water programme is preparing for the transition from the current Water Supply Licensing (WSL) retail market arrangements to the opening of the expanded business retail market in April 2017.

As part of that transition, we will need to stop or revoke some of the current arrangements, and ‘switch on’ or set up the elements of the new market framework. This requires careful planning and sequencing of the relevant activities to provide a seamless transition for customers and market participants. As part of this, we need to identify and understand the interdependencies between the different elements of the market framework.

In particular, we need to:

- Give effect to the new legal and regulatory framework (for example, the new retail licences referred to as Water Supply and Sewerage Licences (WSSLs) and various rules (codes))
- Remove and/or revoke the current market arrangements that are no longer required (for example, existing retail licences referred to as Water Supply Licences (WSLs) and current switching processes)
- Establish the bodies that will become part of the market governance framework (Market Operator (MO) and Panel)

This update for potential market participants and other stakeholders summarises our transition plan and explains when the main elements of the market framework are anticipated to take effect. The rest of this note covers the relevant elements of the market framework:

- The MO;
- The Panel;
- The market codes;
- Other codes;
- Licences and Instruments of Appointment (IoAs); and
- Plans for dealing with any switching (or other relevant) processes that could be underway at the point of transition to the new market arrangements.

Establishing the main elements of the market framework

A critical aspect of the transition planning is deciding when the various elements of the market framework should take effect (when new arrangements become operational and/or obligations become binding). This may be a different date to when they are issued or otherwise established.

The Programme partners consider that it would be better to give effect to as much of the market framework as possible at market opening, rather than turning on some parts of the framework ahead of market opening. This will provide greater certainty for market participants, and reduces the risk of unintended consequences from switching on some elements ahead of market opening.

Market Operator (MO)

The MO will act on behalf of all market participants to administer the systems, processes and interfaces that will enable registration, customer switching and settlement between wholesalers and retailers to take place.

MOSL has been established by existing water companies in anticipation of it becoming the MO, under the legal and regulatory framework. A formal process now needs to be followed to appoint MOSL as the MO. We plan for this to take place ahead of market opening. The MO will be appointed through a collective decision by companies holding an Instrument of Appointment (IoA) (appointed companies) and licensed retailers holding a new WSSL. Prospective retailers wishing to be involved in the process for appointing MOSL as the MO, will need to either have a WSSL, or have submitted a trading application to MOSL and an application for a WSSL to Ofwat by the end of November 2016. This includes both new entrant retailers and WSSL retailers that may be affiliated with an appointed company, if they have completed the steps above by the end of November.

That collective decision will be taken by appointed companies and licensed retailers approving MOSL's draft amended Articles, business plan and budget, which are currently being produced on the basis of it becoming the MO.

The Programme anticipates that the collective decision to appoint MOSL as the MO will be taken by January 2017. That appointment will then be formalised through the legal and regulatory market framework when appointed companies, WSSL retailers and MOSL as the MO all sign the framework agreement for the Market Arrangements Code (MAC). More details on this are set out below. We plan that this will happen in March 2017, ahead of the market opening in April 2017. MOSL would then take on the duties of the MO from April 2017 when the market opens.

Panel

This section sets out the timetable for setting up the enduring Panel in time for market opening in April 2017. It sets out key deadlines for those who wish to nominate, or be nominated to the role of Panel Member.

The Panel will have a role in a number of important areas of market governance, including recommending whether Ofwat should accept or reject proposed changes to the Wholesale Retail Code (WRC) and the MAC. A list of the proposed duties and responsibilities of the Panel is set out in Section 5 of the draft MAC.

The Interim Code Panel (ICP) is currently carrying out a similar role in relation to proposed changes to the draft MAC and WRC, but not the wider duties of the enduring Panel. We plan that the ICP will continue in this role until market opening, when its functions will be carried out by the Panel, and it will then be abolished. In the meantime, the members of the Panel will be nominated and confirmed, so that the Panel can undertake any preparatory work, and be ready to begin its role once the market opens.

The composition of the Panel is set out in paragraph 5.3 of the draft MAC and is summarised below. Please note: this is slightly different to the current composition of the ICP, but there is no restriction on members of the ICP also being nominated for the enduring Panel.

The election of the enduring Panel members

We plan that the elected Panel members will be selected at a Panel Nomination meeting scheduled to take place in January. Although future Panel elections will be organised by the Panel Secretary appointed by the MO, the initial process ahead of market opening will be led by Ofwat as the MO will not be formally confirmed at that time. Nominations can be submitted during December 2016.

To be able to nominate or vote for a Panel member, a company must, at the time of nomination, and no later than 30 November 2016, either hold an IoA or a WSSL, or (for retailers) to have submitted a trading application to MOSL and an application for a WSSL to Ofwat.

The Panel Nomination meeting will elect panel members to the following positions:

- Three associated retailer panel members (selected from either the retail businesses of appointed companies, or affiliated WSSLs)
- Three un-associated retailer panel members (selected from WSSLs that are not affiliated to an appointed company)
- Three wholesaler panel members (selected from the wholesale businesses of appointed companies)

The Panel will also comprise the Panel Chairperson and three independent panel members, appointed by the Chair. Under the provisions of the draft MAC, the Panel chair will be the Chairperson of the MO. The Chairperson will assume the Panel role when the MO is appointed. The Panel Chair will then appoint the three independent members.

Market codes

There are a number of codes that together set out the rules for the market. Some of these are required by legislation, and some will be required under obligations contained in the IoAs and WSSLs.

The WRC and the MAC are sometimes referred to as the market codes. They form a key part of the new market framework. More details can be found in the summary of the [legal framework](#).

The **WRC** is a statutory code, and will be issued by Ofwat following the consultation on the draft WRC in October.

The **MAC** will be given effect by the MO and market participants signing the framework agreement ahead of market opening. Appointed companies and licensed retailers will be required to give effect to the MAC under a condition in the IoAs and the WSSLs, by signing the framework agreement as described above. Ofwat will consult on the draft MAC in October alongside the WRC.

The **Wholesale Contract** gives contractual effect to the WRC and will be consulted on in October together with the MAC and WRC. A wholesale contract will need to be signed by each appointed company and the licensed retailers trading in its area as confirmation that the appointed company will provide the necessary services to the retailer and for each party to be bound by the provisions of the WRC. We propose that all wholesale contracts are signed when the MAC framework agreement is signed ahead of market opening. Companies will need to delegate authority to an individual to sign the contracts and framework agreement on behalf of the company. The programme will notify companies of the time and place for these documents to be signed.

Other codes

The **Customer Protection Code of Practice (CPCoP)** is a code that includes provisions to protect business customers and will be effective from market opening under conditions in the WSSLs and the IoAs.

The **Interim Supply Code (ISC)** is a statutory code which sets out the provisions necessary to ensure customers continue to be supplied if a retailer exits the market in a disorderly fashion. The **Retail Exit Code (REC)** sets out the requirements for Schemes for Terms and Conditions which will apply to business customers who are transferred to a WSSL retailer under the retail exit process and who have not negotiated an agreement with that retailer. The Schemes also to business customers in an exit area who do not have arrangements with any WSSL retailer. Both the ISC and the REC are required under legislation, and will be take effect from market opening.

Licences and the statutory transition scheme

To participate in the business retail market at market opening, a licensed retailer must hold a WSSL. The current WSLs will be revoked at the same time as when the new WSSLs come into effect, so that there is a seamless transition for retailers currently holding a WSL that are granted a new WSSL ahead of market opening.

Any WSSLs that have been granted before market opening will come into effect at market opening.

Some WSLs, known as combined supply licences, allow the licence holder to introduce water to an appointed company's supply system and use this water to supply customers. Under the new market arrangements a WSL for combined supply will be replaced by a WSSL with a wholesale authorisation (in England) or a supplementary authorisation (in Wales). Ofwat published a consultation document on the arrangements in the new regime for introductions of water.

Ofwat intends to use a statutory transition scheme to revoke the existing WSLs, and is currently consulting on its proposals for the content of such a transition scheme.

Dealing with the transition of the switching processes

We are also making plans for dealing with any switching processes that could be underway at the point of transition to the new market arrangements.

Ofwat proposes to restrict customer switching via the current Customer Transfer Protocol (CTP) during the period immediately prior to market opening to prevent any transactions being caught in the middle of the transition to the new arrangements. When this was briefly discussed during recent stakeholder workshops on the IoAs, it was suggested that the period for such a freeze on switching should align to the time taken for a switch under the CTP – currently 20 working days. This seems a sensible approach, and would not prevent retailers from contracting with new customers in the meantime. It would simply mean that retailers would have to set a date for the switch that falls after the market opens. Ofwat are seeking views on this as part of their current consultation on the proposed transition scheme.

Summary of transition plan

The following table sets out the relevant dates for the main transition activities.

Appointing the Market Operator

Activity	Date	Who
Consultation on draft business plan	October 2016	MOSL
Approval of business plan and budget	December 2016	MOSL members, and wider market participants, if different
Decision to appoint MOSL as MO	December 2016	Wholesalers and Retailers
MOSL (as MO) and initial market participants (wholesalers and retailers) sign framework agreement	March 2017	MOSL Wholesalers Retailers
MOSL takes on MO duties and responsibilities	April 2017	MOSL

Choosing the Panel

Activity	Date	Who
Nominations for Panel Members	December 2016	Ofwat
Selection of elected Panel Members	January 2016	Wholesalers and retailers attending the panel nominations meeting
Panel preparation – including induction of panel members and setting up Committees	January - March 2017	Panel members, MOSL
Panel takes on duties and responsibilities under MAC and ICP abolished.	April 2017	Panel members Panel secretary appointed by MOSL acting as MO

Consultation

Activity	Date	Who
Consultation on the proposed statutory transition scheme	Deadline for responses is 9 September 2016	Ofwat
Consultation on proposed new arrangements for the introductions of water (replacing combined supply licences)	Deadline for responses is 8 September 2016	Ofwat
Consultation on draft WRC and Wholesale contract	October	Ofwat
Consultation on draft MAC	October	Ofwat

Codes and Licences

Activity	Date	Who
Revocation of WSLs	Immediately prior to market opening	Ofwat
WSSLs take effect	April 2017	Ofwat
All codes: MAC, WRC, REC, ISC and CPCoP come into effect	April 2017	Ofwat

Next steps

Ofwat is currently consulting on the proposed transition scheme, with a deadline for responses of 9 September 2016. Subject to responses to that consultation, there will be a further statutory consultation on the transition scheme at the end of September.

Ofwat is currently consulting on the proposed new arrangements for the introductions of water under the current combined supply licences. The deadline for responses is 8 September 2016.

Ofwat plans to consult on the draft WRC, draft Wholesale Contract, and draft MAC in October.

Nominations will be invited for the Panel in December, and Ofwat will set a date for the Panel Nominations Meeting in January.

MOSL will seek members views in early September by issuing a Business plan principles and assumptions paper, comments from which will be included in the Business plan for which the intention is to consult with members through the Autumn.

Background notes

A summary of the legal framework for the business retail market, including a description of the various codes, can be found here: http://www.ofwat.gov.uk/wp-content/uploads/2015/10/pap_tec20151030rmolegaloverview.pdf.

The draft MAC, WRC and wholesale contract are published at: <https://www.mosl.co.uk/open-water/codes/>.

Details of the current ICP can be found at: <https://www.mosl.co.uk/open-water/icp/>.

Contact details

For any queries about the Panel nominations process and elections, please contact:

Amanda Rooney at amanda.rooney@ofwat.gsi.gov.uk

For any queries about the transition scheme or transition arrangements more generally, please contact:

Ruth Gibson at ruth.gibson@ofwat.gsi.gov.uk, or Chris Daly at chris.daly@ofwat.gsi.gov.uk

For any queries about the process to agree the MOSL business plan or budget, or the process to appoint MOSL as the MO, please contact:

Steve Lyon steve.lyon@mosl.co.uk