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Trust in water

The legal and regulatory framework for the business retail market from 1 April 2017

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At the moment only a small number of business, charity and public sector (“business”) customers across England and Wales can choose their water retailer and most business customers must use services provided by the monopoly water and/or sewerage companies. The Water Act 2014 (WA14) will allow more eligible business customers to choose their supplier of water and wastewater retail services from 1 April 2017.

This means that for business customers who are supplied using the water supply or sewerage system of an appointed company whose area is wholly or mainly in England, the market will be extended to include all eligible business, charity and public sector customers (‘business customers’) regardless of their usage. However, for those who are supplied using the water supply or sewerage system of an appointed company whose area is wholly or mainly in Wales, the market will not be extended, reflecting the different policy position of the Welsh Government. This means that eligible business customers which meet the 50ML threshold will continue to be able to choose their water supplier but there will be no competition for the provision of sewerage services.

Opening the expanded business retail market requires new systems, licences, rules and processes to enable eligible business and other non-household customers to engage with the market, and for new retailers to enter the market. These licences, rules and processes are contained in the various codes which have been developed as part of the new [legal and regulatory framework](#).

As part of the transition from the current legal and regulatory framework to the new market arrangements, we need to make sure that certain elements of the current framework that will no longer be required, are revoked or otherwise ‘switched off’ and that the new elements are given effect.

This document explains the various elements of the new framework that will be introduced to facilitate the expanded market, and sets out when and how they will come into effect.

Market Architecture Hierarchy

Within the consultations on the Wholesale Retail Code (WRC) and Market Arrangements Code (MAC), we included a market architecture hierarchy to set out the precedence of documents in the event of conflict. The order of precedence shall be:

- i. any Law other than any Appointment, any Licence, the Market Arrangements Code, the Wholesale Retail Code, the Interim Supply Code, the Retail Exit Code and the Customer Protection Code of Practice;
- ii. any Appointment or Licence;
- iii. the Market Arrangements Code;
- iv. the Wholesale-Retail Code;
- v. the Interim Supply Code and the Retail Exit Code; and
- vi. the Customer Protection Code of Practice.

The intention is that Licensees and Appointees will be better able to ensure compliance with their obligations and Ofwat will be better able to enforce compliance with those obligations, where appropriate.

In addition to the MAC and WRC, we have included this hierarchy in the Interim Supply Code and Retail Exit Code.

Licences and Appointments

Under the new retail market arrangements water and wastewater retail services will be provided by either a regional water and/or sewerage company holding an Instrument of Appointment (covering both wholesale and retail activities) or a licensed retailer holding a new Water Supply and/or Sewerage Licence (WSSL). Licensed retailers currently provide water supply services to large users of water under old WSLs, and these are being replaced by WSSLs under changes to the legal framework made by the Water Act 2014.

We explained how and when this will happen in our recent [Transition Scheme Notification](#).

To summarise:

- Current WSLs will be revoked at 23:59:59 on 31 March 2017; and
- New WSSLs will take effect on 1 April 2017

Instruments of Appointments have been modified to include amendments necessary for the new market arrangements. Most modifications were made in August 2016 with appointments since that date being amended as appropriate.

Market Codes

In addition to the new licensing provisions, there will also be a suite of market codes that will act to underpin the new legal and regulatory framework. This includes the:

- Market Arrangements Code;
- Wholesale Retail Code;
- Retail Exit Code;
- Interim Supply Code; and
- Customer Protection Code of Practice

Each code has a different role to play in helping to govern the new market. In order for the codes to take effect, Ofwat needs to designate them. We explain below briefly the role of each Code, any changes we have made to create the versions to be designated and the process through which we will designate them.

Market Arrangements Code

The Market Arrangements Code (MAC) is a non-statutory code issued by Ofwat pursuant to conditions in WSSLs and Instruments of Appointment. The MAC condition will come into force on 1 April 2017. Amongst other things, the MAC sets up arrangements for how the retail market will operate, including the setting up of a panel to help oversee the codes and any changes to these, and the operation of the Market Operator. The MAC also included provisions for the appointment of the Market Operator.

Following a statutory consultation in November/December 2016, we published our [decisions and responses document](#) in February 2017. This document sets out in detail the changes we made to the MAC following the statutory consultation and our own quality and consistency check. We published the final version of the MAC with the decisions and responses document and Ofwat formally designated this version on 7 March 2017.

On 8 March 2017, Appointees and Licensees signed the MAC Framework Agreement as the Original Parties which brings the MAC into effect and ensures these parties are bound by it. All other Parties who have a MAC condition in their

Licence or Appointment and intend to participate in the market from 1 April 2017 will be asked to sign an Accession Agreement by no later than 31 March 2017.

Wholesale Retail Code

The Wholesale Retail Code (WRC) is a statutory code that sets out the relationship between Wholesalers and Retailers, and how the market will operate. [We recently published the proposed final version of the WRC](#), which we intend to designate formally as a code pursuant to sections 66DA and 117F Water Industry Act 1991 (WIA91), when the Secretary of State has commenced our power to do so. We expect this to be 30 March 2017.

The Wholesale Contract was also incorporated into the revised structure of the WRC which we consulted on in November/December 2016 so that essentially the WRC is the Wholesale Contract. The main amendments that were made were to ensure the recitals accurately reflected the revised structure and any references to the WRC or Wholesale Contract similarly reflected that revised structure.

As with the MAC, we published our [responses and decisions document](#) in February 2017. This set out in detail the changes we made to the WRC following the statutory consultation and our own internal quality review of the WRC.

Retail Exit Code

The Water Act 2014 allows Defra to make regulations to provide for retail exit – that is, for an appointed company to apply for permission to transfer all its non-household customers to one or more WSSL retailers. The Secretary of State considered applications for retail exit in December 2016.

Regulation 29 of the Exit Regulations requires that all licensees providing or proposing to provide services in relation to a retail exit area must make and keep under review a scheme setting out the terms and conditions that will apply in all cases where these have not been negotiated with a customer on an individual basis. The MAC condition will come into force on 1 April 2017. Regulation 30 places a requirement on Ofwat to issue a code setting out the basis for schemes produced under regulation 29.

We developed the Retail Exit Code and published a near final version of the Code in April last year. The Retail Exit Code was published in draft because finalising it was dependent on Defra finalising their [Exit Regulations](#) and them coming into effect. We said in our conclusions document that we would review the near final Retail Exit

Code to see whether any consequent amendments were required and publish a final version in March 2017. The changes we have made are primarily a consequence of the provisions in the Regulations together with some minor housekeeping changes.

What has changed in the final version?

Housekeeping changes: We have made some minor housekeeping changes to reflect defined terms in the WRC, and to correct some typographical errors. As explained above, we have also added into the Retail Exit Code the Market Architecture Hierarchy.

Automatic rollover: When we published the near final version of the Retail Exit Code we said that any amendments we would make would be as a consequence of the finalisation of the Exit Regulations. Amendments consequent upon the Exit Regulations are to sections 2.3.1, 2.3.2 and 2.3.3. These amendments deal with the fact that there is to be no automatic rollover of contracts (a consequence of the Customer Protection Code of Practice). No express provision to deal with this was made in the Exit Regulations and it was agreed with Defra that the Retail Exit Code should deal with this issue.

In particular, we have clarified that a scheme made under section 3 of the Retail Exit Code only applies to those customers on transfer, and once they are in an exit area and subsequently find themselves without agreed Terms and Conditions, they will fall under the provisions of sections 4 or 5 of the Retail Exit Code.

Discontinued supplies: We have adopted the alternative drafting that was included in our consultation document within sections 3.2.3, 4.2.3, and 5.2.3 which was dependent on the commencement of paragraph 60 of Schedule 7. This provision will come into force on 1 April 2017 and as a consequence we have adopted the alternative wording.

Ofwat formally designated the Retail Exit Code on 17 March 2017.

Interim Supply Code

In certain circumstances, a water supply or sewerage licensee may cease to supply its customers in the new market, for example as a result of insolvency. To deal with these circumstances, Ofwat is required to issue a code which provides for the arrangements necessary to ensure continuity of affected customers' retail services and appropriate protections for customers and other market participants.

These are referred to as the “interim supply arrangements”. Ofwat published a near final version of the Interim Supply Code in April 2016. This is a statutory code, and makes provision about a number of aspects of how the interim supply arrangements will operate.

What has changed in the final version?

Housekeeping changes: We have made some minor housekeeping changes to reflect defined terms in the WRC, and to correct some typographical errors. As explained above, we have also added into the Interim Supply Code the Market Architecture Hierarchy.

Statement of Interim Supply Capacity: Section 4.2.3 sets out the circumstances in which an Eligible Licensee shall provide a copy of its current or revised Statement of Interim Supply Capacity to the Authority. We have added an email address for Eligible Licensees to provide this information to us.

Removal of Election to be an Eligible Licensee: We have added some text to section 4.3.3 to add clarity on timing in the process. Prior to removing its Election to be an Eligible Licensee, a licensee has to provide a revised Statement of Interim Supply Capacity to the Authority, together with an explanation of its reasons for removing or amending its Election. An Eligible Licensee may thereafter remove its Election by submitting a notification to the Market Operator to that effect in accordance with the relevant provisions of the Wholesale-Retail Code. There was however no indication in the previous Interim Supply Code as to when in the process an Eligible Licensee may send this notification to the Market Operator.

We have therefore amended the wording in section 4.3.3 to “On receipt of confirmation of removal of Election from the Authority, an Eligible Licensee may thereafter remove its Election”. This reflects the process in that Ofwat will consider the revised Statement of Interim Supply Capacity and the explanation provided by the Eligible Licensee before the notification can be sent to the Market Operator.

Ofwat formally designated this code on 17 March 2017.

Customer Protection Code of Practice

Ofwat has a legal duty to make sure that eligible customers are protected in the new market. To help achieve this, we have published a slightly revised version of the Customer Protection Code of Practice (CPCoP) for market opening.

The CPCoP sets out the minimum standards that all retailers will need to comply with in their dealings with customers. It also sets out the minimum standards of behaviour that we expect from retailers at every step of the customer's use of services (the 'customer journey'). That includes:

- Sales and marketing activities;
- Contracts and information;
- Switching suppliers;
- Billing and data; and
- Handling complaints and disputes

What has changed in the final version?

The CPCoP was published as version 1.0 in May 2016. This has been updated with minimal changes.

The arrangements for modification to the CPCoP, set out in section 5, allow for The Authority to propose a change to the CPCoP at any time **“by consulting with each affected Retailer and any other person the Authority considers appropriate”**.

We have decided on this occasion not to consult on the changes we have made which are set out below. We believe that these changes are not of significant materiality to require a consultation.

Housekeeping changes: We have made some minor housekeeping changes to reflect defined terms in the WRC, and to correct some typographical errors. We have also clarified the relevant condition in Appointments (Condition R5) pursuant to which the CPCoP is issued.

Effective date: We have amended the effective date of the CPCoP from 3 April 2017 to 1 April 2017 to align with the date of market opening. We believe that this is necessary so that customers are protected under the scope of the activities covered by the CPCoP, from day 1 of the market.

Proposals for modifications to the CPCoP: We have added an email address for change proposals to be sent in to the Authority. In addition to the Authority, any Retailer or any other person the Authority considers appropriate may propose a change to this code. Where this is the case, a party needs to submit a Customer Protection Code Change Proposal and email seems appropriate. We will provide a template for modification proposals on our website ahead of market opening.

Ofwat formally designated the CPCoP on 17 March 2017.

Other issues

We are aware that there are concerns amongst some industry members around the issue of contact data and how that can best be shared between wholesalers and retailers, in particular in the event of an emergency. The WRC makes provision for retailers to share non-household customer data with wholesalers in emergencies, but the concerns remain about the practical and timely operation of these provisions, particularly where an emergency occurs out of business hours.

We do not intend to be overly prescriptive in the CPCoP, given it is a principles-based code and as such do not intend to amend the CPCoP at this stage. However, we do think that to mitigate the risks identified, it would be prudent for retailers to include the emergency contact information of the relevant wholesaler to be provided on customer bills.