

Information notice

IN 18/03 March 2018



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

Interim Supply and Direction to Supply arrangements

Over the last few months we and MOSL have been working through a range of scenarios relating to the Interim Supply and Direction to Supply processes contained within the various market codes.

Update on position

As part of this work, we have been looking carefully at the legal provisions underlying these processes. We've concluded that our guidance to industry at market opening on who is eligible to opt-in for interim supply and direction to supply purposes for areas where the wholesaler has not exited was not correct. We want to clarify the correct position.

The relevant provisions are in Schedule 8 of the Market Arrangements Code (MAC). As evident from its drafting, Schedule 8:

- Permits all licensed retailers, other than the retail business of the non-exited wholesaler, to opt in to be an Eligible Licensee for the purposes of either process; but
- prohibits the retail business of a non-exited wholesaler from being an Eligible licensee for that area (see paragraph 4.3.9).

This is consistent with the underlying purpose of the interim supply and direction to supply processes which are to provide a robust suite of options to ensure customers to be served in the event of market exit or some other market failure. An interpretation which permits only the retail arm of the non-exited wholesaler to act as Eligible Licensee is at odds with both the wording and purpose of paragraph 4.3.9.

Of course, if no WSSL/WSL opts to be an Eligible Licensee the non-exited wholesaler is the default supplier in any event by virtue of section 63AC(2) WIA without need for intervention or direction by us.

We have confirmed the above position in writing to MOSL, and have requested that MOSL:

- update all trading parties on this position;
- amend the process to reflect this position; and
- re-advertise the ability of parties to opt into areas including those of non-exited companies.

We recognise that this is a change in approach and would be happy to discuss further if any trading parties would like further clarification.

An invitation will be sent to trading parties once MOSL has amended the opt in process to allow companies to opt in to these areas.

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.

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