



Programme update on transition arrangements

February 2017

1. Introduction

As explained in earlier documents, including the previous [programme update](#), published in August 2016, there are a number of transition issues that need to be effectively managed ahead of the expanded retail Market Opening in April 2017. This is important because we need to revoke or stop some of the current arrangements, and 'switch on' or give effect to 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.

In particular, we need to:

- Give effect to the new [legal and regulatory framework](#) (for example, the new retail licences referred to as Water and/or Sewerage Licences (WSSLs), changes to certain conditions of Instruments of Appointment (IoAs) and various 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); and
- Establish the bodies that will become part of the market governance framework (Market Operator (MO) and Panel).

This update for existing and potential market participants and other stakeholders summarises progress to date, and provides an update on the planned approach to the remaining transition issues and next steps.

All parties are focussed on final preparations for the market to open on 1 April 2017 (Market Opening). A final decision on Market Opening will be taken by the Secretary of State in early March following the third stage in the [assurance process](#).

2. The Market Operator (MO)

Market participants have an important role to play in establishing and funding the MO.

The new Market Arrangements Code (MAC) condition in IoAs and WSSLs will take effect at Market Opening, and requires all appointed companies and licensed retailers (market participants) to be a party to, and comply with, the MAC. Among other things, the MAC condition requires market participants to make sure that the MAC includes provisions for the establishment and funding at all times of a body to perform the role of Market Operator fulfilling the functions set out in the MAC.

The MAC, which will take effect at Market Opening, states in draft at paragraph 3.2.2 "The first Market Operator shall be the company appointed by the Wholesalers and Retailers."

Market Operator Services Limited (MOSL) was originally set up by certain companies with a view to it becoming the first Market Operator. On 15 December 2016, members of MOSL approved its business plan and budget for 2017/18, together with updated Articles of Association, on the basis that it would be appointed as the MO from April 2017 onwards, completing MOSL's process for being appointed as the first MO.

In order for Ofwat to be satisfied that all wholesalers and retailers will be compliant with their legal obligations once the MAC condition and MAC take effect at Market Opening, **Ofwat plans to ask each wholesaler and licensed retailer to confirm that they have appointed an MO. Ofwat will write to companies shortly and will append a form for companies to return to that letter. Companies will be requested to respond by 17th February.**

The appointed MO will also be a party to the MAC Framework Agreement (see Schedule 2 of the draft MAC), which gives effect to and binds signatories to the MAC. The MAC Framework Agreement will be signed by all initial market participants on 8 March and will come into effect at Market Opening. Ofwat intends to provide further detail in relation to this signing day shortly. Market participants who do not sign the MAC Framework Agreement on this day will be required to execute an Accession Agreement prior to Market Opening (see Schedule 3 of the draft MAC).

3. The Panel Open Water

The Panel will play an important role in the governance of the market after April 2017, with a number of functions set out in the MAC, including in relation to the MO budget, market audit and code changes.

Nominations for membership of the Panel were [invited](#) in November 2016 with three places available for each category of members - associated retailers (retailer businesses of appointed companies, or affiliated WSSLs), un-associated retailers (unaffiliated WSSLs), and wholesaler positions (wholesale businesses of appointed companies).

The results are summarised below:

	Un-associated retailers	Associated retailers	Wholesalers
Places available	3	3	3
Nominations received	3	2	5
Election held?	No	No	Yes
Places confirmed	3	2	3

As the one remaining place for associated retailers has not yet been filled, we will be inviting another round of nominations for this place shortly. Subject to the outcome of that process, we will address this issue further with associated retailers if required.

Applications for the three places for independent members of the Panel are currently being considered by MOSL, in anticipation of it being the MO at Market Opening and to assist with a smooth transition to the enduring Panel, with selection due to be completed shortly. As the MAC requires that the independent members be appointed by the Panel Chair (also the MO Chair), the appointments will be made initially on a provisional basis, and will be endorsed by the MO Chair as soon as reasonably practicable following MOSL taking on the formal role of MO.

Although the Panel will only begin its formal role after the market opens when the MAC is in effect, there will be an induction process during February and March, so that the Panel is ready to play an effective role when the market opens.

The Interim Code Panel (ICP) will be dissolved shortly, as part of the handover of responsibility to the Panel. The Programme is grateful for the significant contribution by members of the ICP over the last few months, which has helped to develop effective ways of working and to identify lessons learned that will inform the work of the Panel in relation to code changes in the future.

4. Finalising and giving effect to the new codes and licence obligations

There are a number of different activities required to finalise and give effect to the new codes and licence/ Instrument of Appointment obligations. These are summarised below.

Changes to licences and instruments of appointment

What	How	When does this take effect?
WSSLs take effect	Ofwat issues Notice and Direction to licensees, after SoS has confirmed Market Opening	Market Opening
WSLs revoked	Statutory transition scheme (see more details here)	Immediately before Market Opening (i.e. at the end of 23:59:59 on the day before)
New conditions and modifications in IoAs take effect	Ofwat issues Notice to appointees confirming effective date, after SoS has confirmed Market Opening	Market Opening

Ofwat is currently considering responses to the recent [WRC consultation](#) and [MAC consultation](#), and has also carried out its own review of the draft codes. The **final versions of the WRC and MAC are planned to be published on 17 February or shortly thereafter**, together with Ofwat's response documents.

What	How	When does it take effect?
MAC	The MAC is planned to be published on 17 February or shortly thereafter. All initial market participants will be invited to sign the Framework Agreement to give effect to the MAC. This is planned to take place on 8 March in central London.	Market Opening – expected to be 1 April 2017
WRC	The WRC is planned to be published on 17 February or shortly thereafter. Ofwat will formally issue and designate the WRC on 1 April, after the relevant provisions of the Water Act 2014 are commenced. As it will be a statutory code, it is not necessary for market participants to 'sign up' to it but, as the WRC is in the form of a Wholesale Contract, see "Wholesale Contracts" below.	Market Opening – expected to be 1 April 2017
Wholesale contracts	These bilateral contracts can be signed at any point before Market Opening to come into effect at Market Opening, but relevant facilities will be available for companies to sign their wholesale contracts on 8 March, when the MAC Framework Agreement will also be signed, and we encourage companies to consider using that opportunity to do so.	Market Opening – expected to be 1 April 2017
Customer Protection Code of Practice (CPCoP)	Ofwat published a final version of this code in May 2016. However, as it was issued at a stage when 3 April was expected to be the Market Opening date, Ofwat will publish a further final version of this code shortly, amending the effective date to 1 April (and making some minor housekeeping changes). The code will take effect when the relevant conditions in the IoAs and WSSLs (see above) take effect at Market Opening.	Market Opening – expected to be 1 April 2017 (note: current published version refers to 3 April – this will be changed in the final version)
Retail Exit Code (REC)	This code will be issued by Ofwat under Regulation 30 of the Retail Exit Regulations . Ofwat will publish the final version of this code in early March.	When issued in late February (to enable licensees affected by retail exit to have their schemes of terms and conditions in place by Market Opening
Interim Supply Code (ISC)	Ofwat will formally issue the ISC with effect from Market Opening, once the	Market Opening – expected to be 1 April 2017

Leakage and drought working group

In the Autumn 2016, an ICP working group was set up to consider the processes for handling leakage adjustments and drought payments between wholesalers and retailers, and whether any code changes may be required to implement the processes. Although the group has not considered the relevant provisions in the draft codes in any detail yet, it appears likely that some relatively minor changes will be required to both the relevant conditions in the IoAs and to the WRC. This is because the current rules in the IoAs were produced before the Government's decision to open the retail market, and so do not recognise that the relevant wholesaler and retailer could be separate entities and the different ways in which leakage adjustment and drought payments could be allocated and paid needs to be considered carefully to ensure there are no unintended consequences. We do not consider that these issues are on the critical path for Market Opening, so any necessary code changes will be consulted on, finalised and implemented after Market Opening, using the code change modification process set out in the MAC. Any necessary changes to the IoAs will be taken forward in parallel with the code change process.

5. Preparing for volume transfers and Day 1 switching

Why is this necessary?

There are three different scenarios that we need to prepare for:

- Volume transfers i.e. bulk transfers of large numbers of customers to facilitate retail exit – given the recent decisions of the Secretary of State on retail exits, this is anticipated to affect a large proportion of the market;
- Customers affected by retail exit who choose a retailer (different to the acquiring retailer); and
- Customers who choose a retailer and wish to be supplied by that retailer from Market Opening, regardless of whether or not their premises are in a retail exit area.

What does this mean?

This means that MOSL and market participants need to carry out some switching preparation before the market goes live. One of the main advantages of such preparation ahead of Market Opening is that it would allow for easier handling of potentially high volumes of switching at the start of the market, as a large number of business customers are expected to be transferred through the retail exit process. It will also provide an improved customer experience of Market Opening, helping to support trust and confidence in the sector. It will also help to provide a level playing field between retailers who are acquiring customers through the retail exit process, and those that are not, in terms of the customer switching process.

How will it happen?

The Secretary of State has made provision in the [Water Act 2014 \(Commencement No.8 and Transitional Provisions\) Order 2017](#) to facilitate early switching preparation by permitting customers to serve notices in advance of Market Opening, provided that the provision of services in the notice does not commence until Market Opening. MOSL has published details of its planned approach: <https://www.mosl.co.uk/documents/download-info/volume-transfer-for-retail-exit-and-pre-switching-ahead-of-go-live/>.

MOSL will continue to engage with individual companies about the implications of this planned approach, and will publish more detailed guidance shortly.

6. Confirmation of freeze on WSL customer switching under existing Customer Transfer Protocol (CTP) process

Although the preparations for customer switching under the new processes continue as explained above, there is an existing, separate, process for switching large business customers, who can currently choose their retailer. The process is referred to as the Customer Transfer Protocol (CTP). Companies are required by their existing WSL and IoA obligations to follow the CTP. As part of the transition to the new market arrangements, we need to carefully manage the transition from the CTP to the new central switching processes under the Wholesale-Retail Code (WRC).

Ofwat previously proposed to stop retailers with an existing Water Supply Licence (WSL) from switching customers through the current CTP process during the period immediately ahead of Market Opening. As explained above, all WSLs will be revoked immediately ahead of Market Opening. Although we expect that many, if not all, retailers currently holding a WSL will successfully apply for a new Water and/or Sewerage Licence (WSSL), it is important to avoid any customer switches being part way through the process when we transition from the current regime to the new market arrangements. Responses to Ofwat's [consultation](#) on the statutory transition scheme supported this proposed approach, and suggested a period of at least 30 working days ahead of Market Opening, as that is the maximum number of days for a customer switch under the CTP process.

Given the support of companies for this proposal, in the interests of a smooth transition from the existing arrangements to the new market arrangements, we confirm that there will be a freeze on customer switching for the period immediately before of Market Opening. The Secretary of State has helped facilitate this by provision made in the [Water Act 2014 \(Commencement No.8 and Transitional Provisions\) Order 2017](#) ensuring that any notice served on an appointed company since that Order was made on 25 January 2017 cannot take effect until Market Opening. Although customer switching between WSL retailers is not necessarily affected by this provision, **we now expect WSL retailers to avoid seeking to begin new customer transfers through the CTP prior to Market Opening (whether that be from an appointed company or another WSL), and we expect any appointed companies that receive such a request under the CTP during that period to reject it and refer the relevant retailer to the Day 1 switching process outlined above.**

Ofwat confirms that particularly given the new statutory transitional provisions, it would not seek to enforce appointed companies' obligations, under existing Condition S of their Instruments of Appointment, nor licensee's obligations under existing condition 6 of their WSLs, to facilitate customer transfers under the CTP during the period from 25 January to Market Opening.

It is important to note that we are not trying to prevent retailers from gaining new customers, but simply to achieve a smooth transition between the two different switching processes. Although we are stopping customer switching under the old process, it is only for a short period ahead of the preparations for switching under the new arrangements. As explained above, during the period immediately ahead of Market Opening, WSL retailers that have been granted a WSSL may use the process outlined in section 5 of this note to facilitate Day 1 switching.

7. Commercial and compliance risks

Preparing for compliance with the codes

Some market participants have asked for guidance in relation to certain activities that have to be completed in advance of Market Opening so that they may comply with their obligations under the codes when the codes take effect at Market Opening. Particular concerns have been raised in relation to matters which involve or are perceived to involve material financial impact at a time when the legal framework for the market is not actually in force, in particular:

- pre-payment of wholesaler charges for the April 2017 invoice period by those retailers that opt to pre-pay; and
- posting of required credit by retailers who do not opt to prepay.

It is normal for parties affected by a change in legislation or regulation to have to take action ahead of a change in law taking effect. We consider that the decision of the Secretary of State on Market Opening together with Ofwat's early publication and designation of the WRC and MAC as the codes which will take effect at Market Opening should provide sufficient certainty for market participants to make appropriate preparations. So we consider that market participants should refer to the requirements of the codes ahead of Market Opening in considering what action to take, specifically:

- pre-payment would be made on the basis of the P1 report for April 2017 within the timeframes specified in the market codes; and
- credit would be posted by retailers in line with the requirements set out in the Business Terms in anticipation of them taking effect at Market Opening.

Compliance risk following go-live

Some market participants have raised the question of compliance risk at Market Opening, where compliance with the codes and other elements of the legal and regulatory framework after Market Opening is dependent on the specific actions of others. Participants are concerned about potential sanctions being imposed which they cannot avoid. For example, if elements of the central systems are not in place, leaving participants unable to update the market data for which they are responsible and potentially affecting the settlement process.

We recognise these concerns, but consider that the market governance arrangements, as set out in the MAC are equipped to deal with them. We also expect all parties, including Ofwat, the Market Operator, the Panel and market participants to work together to deal with any such compliance issues and act reasonably in relation to any enforcement of the regulatory framework and associated contracts.

8. Summary plan with key dates

Switching activities

Activity	Date
Last date for WSL retailer to submit a request to switch a customer under existing Customer Transfer Protocol (CTP) process, to avoid any such transfers being part way through when the market opens	25 January
Period during which appointed companies and WSLs are expected to reject all WSL requests to switch customers under the existing CTP process	25 January – 31 March inclusive
Pre-switching opens for WSSL retailers using CMOS in anticipation of the WRC taking effect. Transfer Registration Applications (TRAs) with registration start dates from 1 April onwards may be submitted.	6 March
Deadline for TRAs to be submitted for registration on 1 April (later registration dates can continue to be submitted)	Thursday 23 March

Codes and licences

The coming into effect of the REC and statutory transition scheme are contingent on the prior decision on Market Opening being taken by the Secretary of State, expected to be in early March.

Activity	Date
Ofwat publication on statutory transition scheme to revoke WSLs	10 February
MAC and WRC published in final versions for Market Opening, together with consultation responses	Planned to be 17 February or shortly thereafter
Companies sign MAC Framework Agreement	8 March
Opportunity for companies to sign Wholesale Contracts	8 March
REC issued and takes effect	Early March
Statutory transition scheme issued and takes effect	Early March
WSLs revoked	Immediately before Market Opening (i.e. at the end of 23:59:59 hrs on 31 March)
WSSLs take effect	Market Opening (i.e. on 1 April)
New conditions and modifications in IoAs take effect	Market Opening (i.e. on 1 April)

 MAC, WRC, CPCoP, ISC take effect	Market Opening (i.e. on 1 April)
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Other activities

Activity	Date
Companies requested to confirm appointment of MO	February
Deadline for companies to return form confirming appointment of MO	17 February
Anticipated Secretary of State decision on Market Opening Date	20 February – 3 March
Panel induction and preparations	February - March

9. Contact details for more information

For any queries about volume transfers or Day 1 switching, please contact Martin Silcock (martin.silcock@mosl.co.uk)

For queries about the Panel nominations process, please contact Dan Mason (daniel.mason@ofwat.gsi.gov.uk)

For any queries about the legal and regulatory framework, including the codes and the freeze on WSL customer switching ahead of Market Opening, please contact Dan Mason (daniel.mason@ofwat.gsi.gov.uk)

For any queries about retail exit, please contact David Jones (david.jones@defra.gsi.gov.uk)