

UK Water Sector Reform – Update



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In this first in a new regular series of updates, our expert team provide an overview of some recent Ofwat activities and updates as the sector steams towards the implementation of non-household retail competition.

Compliance Codes: Companies to publish by 1st April 2016

This month, Ofwat reminded water and sewerage companies of their expectation that Compliance Codes governing the relationships between appointed companies and Licensees be in line with current Ofwat guidance and, if not already, published online.

The requirements from Ofwat set out the need for companies to demonstrate how they will handle key compliance issues such as arm's length trading, information security and processes, staff training and general statements of approach to compliance, monitoring and disciplinary procedures.

With a couple of weeks remaining for publication, the clock is ticking for those who have yet to review and publish their Compliance Codes.

Companies to publish indicative wholesale access charges by October 2016

Ofwat have set out an expectation that water and sewerage companies should publish indicative wholesale access charging information for 2017-18 by October this year. Ofwat have indicated that they will be consulting on wholesale access charging rules and requirements in the coming months.

This will be a critical aspect in any company's demonstration of complying with level playing field

requirements; with potentially significant consequences should a Competition Law challenge be mounted against a company in relation to their charging scheme.

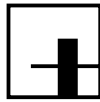
Companies should therefore start to consider their current arrangements and be prepared to make any necessary changes as part of any developments from Ofwat in the charging guidance.

Ofwat guidance published: Application process for water and sewerage licences

Ofwat has now published final guidance for prospective retailers wishing to apply for a Water and Sewerage Services Licence (WSSL). The guidance expands on the requirements and questions set out in Ofwat's application form, setting out detailed requirements for each of the application form aspects.

These include points covering individual managerial competency questions, the demonstration of financial stability, assuring Ofwat of the readiness of customer and market interface systems, demonstrating the applicant's understanding of key regulatory requirements in relation to water and environmental quality, as well as guidance setting out the expected scope and nature of applicants' business plans.

Right at the very start of the guidance, Ofwat make clear that this is not a definitive statement of the law and regulatory framework in this area. It will therefore be of



critical importance for applicants to consider carefully the many general aspects and detailed requirements within each question, to ensure that the application process goes as smoothly as possible.

Applicants will be able to apply for a WSSL from April 2016.

Ofwat Consultation: When a customer is not a customer

Last week Ofwat launched a consultation on supplementary guidance for water and sewerage companies – the purpose is to provide assessment points for determining whether a customer is, in fact, a non-household customer and therefore eligible to participate in the non-household retail market come April 2017.

This consultation builds on previous guidance that Ofwat published in 2015. The guidance being consulted on now is a result of various stakeholder engagements and feedback that the existing guidance was not clear enough in some respects. In particular, some ambiguity remained around the definition of non-household in the case of ‘mixed use’ premises: where the distinctions between the domestic and non-domestic elements are not clear. The new supplementary guidance provides some more detail on how to assess the use and purpose of such a property.

The new supplementary guidance proposes the following assessment hierarchy:

1. Determine the extent of the premises. (ie – how much of it is a house vs. not).
2. Determine the principal use of the premises.
3. Where is it not readily apparent whether the principal use of the premises is household or non-household, liability for business rates or council tax may provide a first approximation.
4. Where the premises are liable for neither Council

Tax nor Business Rates, or where the premises are liable for both (i.e. the premises are mixed use), it is important to determine which use is the “principal” one.

Some specific scenarios are outlined by Ofwat, giving examples of how to determine eligibility. For example, university halls of residence are to be considered non-household using a fairly straightforward logic. However, the guidance gets slightly more complicated when considering scenarios such as serviced apartments – these can be household or non-household, depending on whether the target market is tourists or, for example, people using the property primarily as a domestic home. This may be a difficult distinction to make in practice, although there are some indicators which can be drawn from the treatment of such properties by the council tax system.

However, just like the previous guidance, this consultation does not specifically deal with a common mixed domestic/ non-domestic example: Bed and Breakfast accommodation. The assessment criteria require a degree of interpretation and judgement on the part of water/sewerage undertakers. Should the customer and company’s expectation not be aligned, this could lead to some difficult conversations, possible referral to Ofwat for determination, or even further legal action. In navigating through all of these complexities, the most important thing for water and sewerage companies will be to develop standard assessment criteria and apply this consistently across the customer base.

Ofwat is welcoming comments on the proposed supplementary guidance by 7th April.

[For further information or advice on any of the issues discussed in this briefing note, please get in touch with your usual Shepherd and Wedderburn contact.](#)