



briefing

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Leading the way on inset appointments

A key Morgan Cole client operating at the forefront of the inset appointments market, Independent Water Networks Limited (IWN), has been granted a number of inset appointments in the water sector and has entered into bulk supply and discharge agreements with incumbent suppliers.

IWN, which is part of Inexus (a major utilities infrastructure group within the UK), is one of the most active players in the water connections market. IWN has secured a number of formal inset appointments in England and has submissions pending in relation to a significant number of proposed appointments in England and Wales, thereby contributing to the “[sharp rise](#)” in the number of inset applications observed recently by Ofwat.

Inset appointments

An “[inset appointment](#)” (or, in current Ofwat language, a “[new appointment](#)” or “[variation](#)”) is the process by which a limited company (under an Instrument of Appointment granted by Ofwat) can replace an incumbent supplier in respect of the provision of water and sewerage services within a specific area. An inset appointee is subject to the same regulation as the replaced incumbent supplier and has the same rights and responsibilities as incumbent suppliers.

Whilst there are three separate criteria that can support an inset appointment, IWN has based its applications on the unserved criterion, which applies where the premises within the area of the proposed inset appointment (such as a new housing development) are not supplied with water or sewerage services by an appointed licensed supplier. According to Ofwat, this is the most common criterion used by inset applicants.

The status of a proposed inset site, and whether it is “[served](#)” or “[unserved](#)”, is a matter ultimately determined by Ofwat in the light of independent verification but, understandably, is often a contentious matter between the proposed inset appointee and the incumbent supplier. Nevertheless, recent Ofwat guidance makes it clear that disputes involving the status of a proposed site must not interfere with other negotiations between the inset applicant and the incumbent supplier (such as those relating to bulk supply and bulk sewerage agreements), which are expected to continue in a “[timely and constructive](#)” manner.

Revised guidance

The guidance on the determination of the status of a site was part of wider revised guidance on inset appointments issued by Ofwat earlier this year. Such guidance is helpful to prospective new appointees and incumbent suppliers alike as there has been a growing general need within the sector for regulatory clarity and guidance in this area. It is hoped that future negotiations undertaken by prospective new appointees and incumbent suppliers will be facilitated by this guidance. IWN has been and continues to be actively involved in calling for greater regulatory certainty in this sector.

The latest Ofwat guidance covers the following key areas:

- bulk pricing
- infrastructure charges
- assessment of whether a site is unserved
- financial viability of new inset appointees
- obligations on new inset appointees
- ensuring customers are adequately served and are no worse off

Bulk supply and bulk sewerage agreements

In order to serve its customers within its inset area, a new appointee can request bulk supply and bulk sewerage services from an incumbent supplier. Accordingly, IWN has executed a number of such agreements with incumbent suppliers in connection with existing appointments and as part of ongoing applications for future appointments. Lawyers from Morgan Cole's Energy and Environment team have been closely involved in negotiations relating to these agreements.

What next?

Inevitably, regulation in this area will be subject to ongoing development. Ofwat is listening to stakeholders, having organised two inset forums, one in October 2008 and the other in January this year. Ofwat underlines that it will consult on revised guidance in due course and that current guidance "[should be used as a guide until it is superseded by a further statement](#)".

Prospective new appointees, as well as incumbent suppliers and stakeholders affected by these developments, would benefit from being conversant with the current guidance so that they can comply with existing principles and inform the debate on future policy.

If nothing else is certain, it is evident from Professor Martin Cave's report in April this year that an increasing focus on improving the service received by customers and on achieving better environmental outcomes, and, in particular, on the use of market forces and better regulation to achieve those ends, will drive that debate.

More information

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