

Draft retail exit code

Retail Exit Code

Issued by the Water Services Regulation Authority pursuant to [Regulation 28 of The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016]

[Effective (once Exit Regulations come into force)]

Version DRAFT 05042016

Change History

Version Number	Date of Issue	Reason For Change	Change Control Reference	Sections Affected
DRAFT 26012016	26 Jan 2016	First draft for legal review	N/A	N/A
Draft 03022016	3 Feb 2016	Second draft for legal review	N/A	N/A
Draft 05042016	6 April 2016	Third draft for legal review	N/A	1.1, 2.3, 3.1, 3.2, 4.1, 4.2, 5.2

Contents

1.	Definitions and interpretation.....	4
1.1	Defined terms	4
1.2	Interpretation.....	6
2.	Introduction.....	9
2.1	Purpose of this code	9
2.2	Scope of this code	9
2.3	Types of Schemes of Terms and Conditions	9
3.	Provisions about Schemes of Terms and Conditions for Transferred Customers.....	10
3.1	Price requirements.....	10
3.2	Non Price requirements	10
4.	Provisions about Schemes of Terms and Conditions for Eligible Exit Area Customers who are SMEs.....	12
4.1	Price requirements.....	12
4.2	Non Price requirements	12
5.	Provisions about Schemes of Terms and Conditions for Eligible Exit Area Customers who are not SMEs.....	14
5.1	Price requirements.....	14
5.2	Non Price requirements	14
6.	Provision of information to Customers.....	16

1. Definitions and interpretation

1.1 Defined terms

In this document the following capitalised terms shall have the following meaning:

Definitions	
Term	Definition
“1991 Act”	the Water Industry Act 1991
“2014 Act”	the Water Act 2014
“Acquiring Licensee”	a Licensee which has a duty pursuant to the Exit Regulations to continue the supply of water or provision of sewerage services to any Transferred Customer on and after the Exit Date.
“Appointment”	the instrument of appointment granted to an a relevant undertaker under the 1991Act
“Area”	any area for which an Appointment is held
“Business Day”	the period of 08:00 to 18:00 hours on any day other than a Saturday or Sunday, or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971
“Cancellation Request”	as defined in the Wholesale Retail Code
“Charges Scheme”	a charges scheme produced by a relevant undertaker pursuant to s143 of the 1991 Act
“Disconnection Request”	as defined in the Wholesale Retail Code
“Eligible Exit Area Customers”	the owner or occupier of Eligible Premises in a retail exit area
“Eligible Water Supply Licensee	as defined in the Exit Regulations
“Eligible Licensee”	an Eligible Water Supply Licensee or an Eligible Sewerage Licensee.
“Eligible Premises”	as defined in Wholesale Retail Code.
“Eligible Sewerage Licensee”	as defined in the Exit Regulations
“Exit Date”	as defined in the Exit Regulations

Definitions	
Term	Definition
“Exit Regulations”	any regulations made under section 42 of the 2014 Act from time to time
“Go Live Date”	The date determined by the Secretary of State as the date when the retail water and sewerage market for Eligible Premises opens.
“Licence”	a Water Supply Licence or a Sewerage Licence
“Licensee”	the holder of a Licence
“Market Operator”	as defined in the Wholesale Retail Code
“Permitted Adjustment”	the adjustment that the relevant undertaker for the retail exit area in which the Transferred Customer's Eligible Premises are located would have been entitled or required to make to the part of the Charges Scheme applicable to the Transferred Customer and/or Eligible Exit Area Customer pursuant to the notice given by the Authority to the relevant undertaker on 16 December 2016 of a determination of price controls under that undertaker's Appointment, save that, instead of “wholesale revenue”, the Licensee shall include the relevant Wholesale Charges for the class of customer which would include the Transferred Customer and/or the Eligible Exit Area Customer. This adjustment would include the possibility of making adjustments to tariffs to rebalance charges between customers and to make adjustments to meet control limits, in each year to which the determination of price controls applies, as would apply had the undertaker not exited.
“Scheme of Terms and Conditions	the scheme or schemes made by Licensees pursuant to Regulation [27] of the Exit Regulations
“Small and Medium-sized Enterprise (SME)”	an Eligible Exit Area Customer with fewer than 250 employees.
“Transferred Customer”	the owner or occupier of Eligible Premises which were transferred to the Acquiring Licensee on the Exit Date
“Wholesale Charges”	as defined in the Wholesale Retail Code
“Wholesale - Retail Code”	the code issued by the Authority under sections 66DA and 117F of the 1991 Act

1.2 Interpretation

1.1.1 In this Retail Exit Code:

- (a) References to 'this code' are to this Retail Exit Code;
- (b) References to 'Sections' are to sections of this Retail Exit Code unless otherwise expressly stated;
- (c) References to Licensees will refer to all Licensees, unless otherwise specified.
- (d) Words imparting a gender include every gender and references to the singular include the plural and vice versa;
- (e) Words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident and for whatever purpose) and vice versa;
- (f) Save as otherwise expressly provided references to time are to local time;
- (g) References to 'writing' or 'written' shall include email;
- (h) References to 'day' and 'calendar day' mean the same as one another;
- (i) References to the Retail Exit Code or any other document are to this Retail Exit Code or that document as in force for the time being and as amended, supplemented, varied, modified, renewed, replaced or extended from time to time in accordance with the requirements of this Retail Exit Code or that document (as the case may be);
- (j) A reference to any body is:
 - (i) if that body (statutory or otherwise) is replaced by another organisation, deemed to refer to that replacement organisation; and

- (ii) if that body (statutory or otherwise) ceases to exist, deemed to refer to that organisation which most substantially serves the same purposes as the original body;
- (k) A reference to a statute or statutory provision shall, unless otherwise stated, be construed as including:
 - (i) a reference to any orders, regulations and subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made from time to time under the statute or statutory provision whether before or after the effective date; and
 - (ii) a reference to that statute, statutory provision or subordinate legislation as in force at the effective date and as from time to time modified or consolidated, superseded, re-enacted or replaced (whether with or without modification) after the effective date;
- (l) References to a person shall, except where the context requires otherwise, include its successors in title and permitted assignees;
- (m) A reference to a particular condition of a Licence shall be construed at any particular time as including a reference to any modification of that condition in force at that time; and
- (n) Any words or expressions used in the Water Industry Act 1991 or the Water Act 2014 shall, unless the contrary intention appears, have the same meaning when used in the Retail Exit Code.
- (o) The headings and contents table in the Retail Exit Code are for convenience only and do not affect its interpretation.
- (p) In the Retail Exit Code, the words 'other', 'includes', 'including' and 'for example' do not limit the generality of any preceding words, and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.

- (q) In the Retail Exit Code, the words 'for the time being' mean at the relevant time now or in the future unless the context requires otherwise.

2. Introduction

2.1 Purpose of this code

- 2.1.1 This document is the code issued by the Authority pursuant to Regulation [28] of the Exit Regulations.
- 2.1.2 This code should be read in conjunction with the relevant provisions of the 1991 Act, the 2014 Act and the Exit Regulations.

2.2 Scope of this code

- 2.2.1 This code makes provision about the following:
- (i) the principles to be applied by Licensees in developing Schemes of Terms and Conditions; and
 - (ii) the obligations placed on a Licensee to inform Eligible Exit Area Customers of its applicable Scheme of Terms and Conditions.

2.3 Types of Schemes of Terms and Conditions

- 2.3.1 An Acquiring Licensee shall ensure that it makes and from time to time revises a Scheme of Terms and Conditions which complies with the principles set out in Section 3 as well as Schemes of Terms and Conditions which comply with Sections 4 and 5.
- 2.3.2 All Licensees who are providing or proposing to provide services to Eligible Exit Area Customers who are Small and Medium-sized Enterprises (SMEs) under their Licence(s) shall ensure that they make and from time to time revise Schemes of Terms and Conditions which comply with the principles set out in Section 4.
- 2.3.3 All Licensees who are providing or proposing to provide services to Eligible Exit Area Customers other than SMEs under their Licence(s) shall ensure that they make and from time to time revise Schemes of Terms and Conditions which comply with the principles set out in Section 5.

3. Provisions about Schemes of Terms and Conditions for Transferred Customers

3.1 Price requirements

- 3.1.1 Subject to section 3.1.2, in making the price terms to be included within a Scheme of Terms and Conditions for Transferred Customers, the Acquiring Licensee must ensure that the charges payable by the Transferred Customer do not exceed the charges that would have been payable on the Exit Date by that Transferred Customer had they been able to remain with the relevant undertaker.
- 3.1.2 The Acquiring Licensee shall adjust the maximum charges payable by Transferred Customers on 1 April each year by the Permitted Adjustment.
- 3.1.3 The Authority will review the price requirements in sections 3.1.1 and 3.1.2 at the end of the first review of price limits for non-household customers for relevant undertakers after the Go Live Date to determine whether those requirements are necessary or require adjustment.

3.2 Non Price requirements

- 3.2.1 In making the non-price terms to be included in a Scheme of Terms and Conditions for Transferred Customers, the Acquiring Licensee must comply with the following principles:
- 3.2.2 the Scheme must be consistent with Acquiring Licensee's obligations under its Licence and applicable law.
- 3.2.3 [A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if the Transferred Customer's Eligible Premises are not of a type specified in Schedule 4A of the 1991 Act and:
- (a) the Transferred Customer is liable to pay charges to the Acquiring Licensee and has failed to do so before the end of a period of seven days beginning on the day after he is served with notice requiring him to do so and the Acquiring Licensee has made a Disconnection Request; or

- (b) the Transferred Customer has consented to or has requested the discontinuance.]

Alternative drafting for 3.2.2 if relevant parts of Schedule 7 are commenced

3.2.4 A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if

- (a) The Acquiring Licensee would be entitled to make a request pursuant to section 61(1ZB) of the 1991 Act; or
- (b) the Transferred Customer has consented to or has requested the discontinuance.]

3.2.5 Other than the right of an Acquiring Licensee to submit a Cancellation Request to the Market Operator under the Wholesale Retail Code, nothing in the Scheme of Terms and Conditions shall prevent or restrict the Transferred Customer's right or ability to transfer the supply of its retail service to another Licensee or to other terms and conditions offered by the Acquiring Licensee at any time. In particular, there shall be no charge or fee payable by the Transferred Customer upon termination of the Scheme of Terms and Conditions.

3.2.6 Where a Transferred Customer relocates within the same Area the Acquiring Licensee should continue to offer the same Scheme of Terms and Conditions.

4. Provisions about Schemes of Terms and Conditions for Eligible Exit Area Customers who are SMEs

4.1 Price requirements

- 4.1.1 In making the price terms for a Scheme of Terms and Conditions which applies to Eligible Exit Area Customers who are SMEs but who are not eligible to be supplied pursuant to the Scheme of Terms and Conditions for Transferred Customers, a Licensee shall ensure that the charges payable by the Eligible Exit Area Customer do not exceed the charges that would have been payable on the Exit Date by that Eligible Exit Area Customer had they been supplied by the relevant undertaker pursuant to its Charges Scheme as those charges would have been adjusted each year following the Exit Date by the Permitted Adjustment.
- 4.1.2 The Authority will review the price requirements in section 4.1.1 at the end of the first review of price limits for non-household customers for relevant undertakers after the Go Live Date to determine whether those requirements are necessary or require adjustment.

4.2 Non Price requirements

- 4.2.1 In making the non-price terms for a Scheme of Terms and Conditions which applies to Eligible Exit Area Customers who are SMEs but who are not eligible to be supplied pursuant to the Scheme of Terms and Conditions for Transferred Customers, a Licensee shall comply with the following principles:
- 4.2.2 the Scheme of Terms and Conditions must be consistent with the Licensee's obligations under its Licence and applicable law.
- 4.2.3 [A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if the Eligible Exit Area Customer's Eligible Premises are not of a type specified in Schedule 4A of the 1991 Act and:
- (a) the Eligible Exit Area Customer is liable to pay charges to the Licensee and has failed to do so before the end of a period of seven

days beginning on the day after he is served with notice requiring him to do so and the Licensee has made a Disconnection Request;

- (b) the Eligible Exit Area Customer has consented to or requested the discontinuance.]

Alternative drafting for 4.2.2 if relevant parts of Schedule 7 are commenced

4.2.4 [A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if

- (a) The Eligible Licensee would be entitled to make a request pursuant to section 61(1ZB) of the 1991 Act; or
- (b) the Eligible Exit Area Customer has consented to or has requested the discontinuance.]

4.2.5 Other than the right of a Licensee to submit a Cancellation Request to the Market Operator under the Wholesale Retail Code, nothing in the Scheme of Terms and Conditions shall prevent or restrict the Eligible Exit Area Customer's right or ability to transfer the supply of its retail service to another Licensee or to other terms and conditions offered by the Licensee at any time. In particular, there shall be no charge or fee payable by the Eligible Exit Area Customer upon termination of the Scheme of Terms and Conditions.

4.2.6 Where an Eligible Exit Area Customer relocates within the same Area the Licensee should continue to offer the same Scheme of Terms and Conditions.

5. Provisions about Schemes of Terms and Conditions for Eligible Exit Area Customers who are not SMEs

5.1 Price requirements

- 5.1.1 In making the price terms for a Scheme of Terms and Conditions which applies to Eligible Exit Area Customers who are neither SMEs nor eligible to be supplied pursuant to the Scheme of Terms and Conditions for Transferred Customers, a Licensee shall ensure that:
- 5.1.2 the charges payable by the Eligible Exit Area Customer are reasonable; and
- 5.1.3 there is no undue preference shown to and that there is no undue discrimination against any Eligible Exit Area Customer compared with the Licensee's other Non-Household Customers of the same class as the Eligible Exit Area Customer ..

5.2 Non Price requirements

- 5.2.1 In making the non-price terms for a Scheme of Terms and Conditions which applies to Eligible Exit Area Customers who are neither SMEs nor eligible to be supplied pursuant to the Scheme of Terms and Conditions for Transferred Customers, a Licensee shall comply with the following principles:
- 5.2.2 the Scheme of Terms and Conditions must be consistent with the Licensee's obligations under its Licence and applicable law.
- 5.2.3 A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if the Eligible Exit Area Customer's Eligible Premises are not of a type specified in Schedule 4A of the 1991 Act and:
- 5.2.4 the Eligible Exit Area Customer is liable to pay charges to the Acquiring Licensee or relevant undertaker and has failed to do so before the end of a period of seven days beginning on the day after he is served with notice

requiring him to do so and the Licensee has made a Disconnection Request;

- (a) the Eligible Exit Area Customer has consented to or requested the discontinuance.

Alternative drafting for 5.2.2 if relevant parts of Schedule 7 are commenced

5.2.5 [A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if

- (a) The Eligible Licensee would be entitled to make a request pursuant to section 61(1ZB) of the 1991 Act; or
- (b) the Eligible Exit Area Customer has consented to or has requested the discontinuance.]

5.2.6 Other than the right of a Licensee to submit a Cancellation Request to the Market Operator under the Wholesale Retail Code, nothing in the Scheme of Terms and Conditions shall prevent or restrict the Eligible Exit Area Customer's right or ability to transfer the supply of its retail service to another Licensee or to other terms and conditions offered by the Licensee at any time. In particular, there shall be no charge or fee payable by the Eligible Exit Area Customer upon termination of the Scheme of Terms and Conditions.

5.2.7 Where an Eligible Exit Area Customer relocates within the same Area the Licensee should continue to offer the same Scheme of Terms and Conditions.

6. Provision of information to Customers

- 6.1.1 As soon as possible and not later than two months of the date from which the Licensee commences supply to the Eligible Exit Area Customer under the applicable Scheme of Terms and Conditions, the Licensee shall write to the Eligible Exit Area Customer providing the following information:
- (a) a copy of the applicable Scheme of Terms and Conditions;
 - (b) the date from which the Licensee commenced the provision of supplies to the Eligible Exit Area Customer;
 - (c) that the Eligible Exit Area Customer has the right to switch to another provider of water and/or sewerage services at any time; and
 - (d) that alternative terms and conditions from the applicable Scheme of Terms and Conditions may be available and how information about such alternative terms and conditions may be obtained.
- 6.1.2 If a Transferred Customer requests a copy of alternative terms and conditions that the Acquiring Licensee, or Licensee has available, the Acquiring Licensee or Licensee shall provide these within 10 Business Days after receiving the request.
- 6.1.3 If an Eligible Exit Area Customer requests a copy of alternative terms and conditions that the Licensee has available, the Licensee shall provide these within 10 Business Days after receiving the request.

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.

Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

Phone: 0121 644 7500
Fax: 0121 644 7533
Website: www.ofwat.gov.uk
Email: mailbox@ofwat.gsi.gov.uk

Printed on 75% minimum de-inked post-consumer waste paper.
April 2016

ISBN 978-1-910739-60-0

© Crown copyright 2016

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

This document is also available from our website at www.ofwat.gov.uk.

Any enquiries regarding this publication should be sent to us at mailbox@ofwat.gsi.gov.uk.

