

Consultation on interim supply code: conclusions

About this document

The UK Government is committed to opening a retail market that will provide choice to eligible business, charity and public sector organisations (non-household customers) in England from April 2017.

This document focuses on our proposals for the introduction of arrangements to address the situation where, in certain circumstances, a water or sewerage supply licensee ceases to supply its customers in the new market, for example as a result of insolvency. These are referred to as the “interim supply arrangements”. These arrangements will ensure continuity of affected customers’ retail services and appropriate protections for customers and other market participants in such an event.

In our [February 2016 policy conclusions](#) document we set out our decisions on these matters, informed by the responses to our [November 2015 consultation](#). At the same time we published and invited views on the [draft text of the Interim Supply Code](#) (ISC). The ISC is a statutory code which will make provision about a number of aspects of how the interim supply arrangements will operate.

This document sets out our conclusions on the February consultation on the ISC. Alongside this document we have published an updated version of the Interim Supply Code, which includes a number of text changes made to reflect the conclusions described in this document. We have published the ISC as both a clean and a tracked-changes version (changes tracked against the February version).

This document and the published ISC should be read in conjunction with the following related documents:

- the relevant provisions of the Water Act 2014 (WA14), which will amend the Water Industry Act 1991 (WIA91) to establish the overall legal framework for the interim supply arrangements;
- the Wholesale-Retail Code (WRC) and subsidiary documents published by [Open Water](#), as there are many important interactions between the proposed interim supply arrangements, the ISC and the proposed terms and processes set out in the WRC;
- our [November 2015 consultation](#) document, which included detailed descriptions of the regulatory and policy context for the interim supply arrangements and the overall legal framework for interim supply which, for brevity, are not repeated in this conclusions document; and
- our [February 2016 policy conclusions](#) document.

Retail services include activities such as billing and customer services and at the moment, only a limited number of customers across England and Wales can choose their retailer. Most customers must use services provided by their local monopoly water only or water and wastewater companies. The Water Act 2014 will allow eligible business, charity and public sector organisations to choose their supplier of water and wastewater retail services from April 2017. For customers who use the supply system of an appointed company whose area is wholly or mainly in England, the market will be extended to include all eligible business, charity and public sector organisations. For those who use the supply system of an appointed company whose area is wholly or mainly in Wales, the market will not be extended, reflecting the different policy position of the Welsh Government. More information on which customers are eligible is available in [our eligibility guidance](#).

The new market is expected to deliver [about £200 million of overall benefits to customers and the UK economy](#) and research shows that [business, charity and public sector customers want this choice](#).

Customers will be able to shop around and switch to the best deal. Investors and retailers will have new opportunities for growth. And the environment will benefit from customers using new water efficiency services. Customers are already benefiting from [a similar market in Scotland](#).

Opening the new market is a complex challenge but it is [on track to open in April 2017](#). The design is almost complete, and work is now being carried out to deliver the technical systems, checks and ways of working that are needed to get the market right for customers.

The interim supply arrangements described in this document and the published ISC form part of a suite of customer protection arrangements that will be necessary to ensure that the new retail market operates effectively and in the best interests of customers.

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1. Executive Summary

The Water Industry Act 1991 (WIA91), once amended by the Water Act 2014 (WA14), will establish the overall legal framework for the interim supply arrangements, and provide a number of powers and duties for Ofwat. These include an obligation to establish an Interim Supply Code (“ISC”) which may make provision about a number of aspects of how the interim supply arrangements will be implemented in practice, including:

- how and when we will exercise our powers to direct an alternative retailer to continue supply for affected customers of a failed retailer;
- appropriate mechanisms and procedures to allocate affected customers; and
- The terms and conditions under which the alternative retailer must continue supply.

Our [November 2015 consultation](#) on the interim supply arrangements described how Ofwat intends to exercise these powers and duties, to inform the development of the ISC and related amendments to other legal instruments (such as the Wholesale-Retail Code).

Our [February 2016 policy conclusions](#) document summarised the responses to the November consultation, and set out our policy conclusions on the key issues upon which we consulted. A number of these policy decisions provided the basis for the [draft ISC](#) which we published and invited views on in February.

We received thirteen responses to our February consultation on the draft ISC. Section 3 of this document summarises the issues raised by respondents and explains our conclusions on these and, where applicable, how these have been reflected in the revised ISC or will be reflected in other instruments or related areas of work. The first section of Table 1 below summarises these decisions and next steps.

For completeness and ease of reference, Table 1 also includes a second section which sets out the other policy decisions which have been reflected in the ISC and which were detailed in our February policy conclusions document.

Table 1: Summary of conclusions and next steps

Issue	Proposed approach	Further information
Conclusions relating to issues raised by respondents to February consultation		
Ofwat prior approval for Wholesale Contract termination	After further consideration of this issue we have decided that wholesalers shall not be required to gain prior approval from Ofwat for Wholesale Contract termination. We have decided that an alternative approach shall be implemented, whereby a Wholesaler shall be required to provide 10 business days' notice to Ofwat that it intends to terminate a contract. We also intend to review the WRC to ensure that Ofwat is notified of relevant events that could ultimately lead to contract termination (e.g. late payments, non-payments, breach of credit requirements). We will also review the WRC to ensure that there are appropriate checks and balances regarding the circumstances and manner in which a wholesaler can exercise the right to terminate a Wholesale Contract, non-compliance with which could lead to Ofwat taking enforcement action.	Section 3.1
ISC governance	We do not consider that the ISC needs to include any specific modification procedures. Once effective, any future modifications to the ISC will only be made following consultation, in line with Ofwat's statutory functions and duties and the scope and powers set out in legislation.	Section 3.2
Requirement for "Statement of Interim Supply Capacity"	We continue to consider the Statement of Interim Supply Capacity to be a necessary feature of the interim supply arrangements. This is an important safeguard to ensure that interim supplier allocations do not result in poor outcomes for customers, nor risk placing another retailer into distress.	Section 3.3
"Ability to finance costs of interim supply" as a measure of interim supply capacity	We continue to consider the Statement of Interim Supply Capacity to be appropriate in this regards, as it already requires confirmation of an Eligible Licensee's ability to finance the costs of serving additional interim supply customers. It also provides that the Authority may request reasonable additional information from an Eligible Licensee to support its Statement of Interim Supply Capacity. This could include the additional financial information suggested, if considered appropriate in the circumstances.	Section 3.3
"Customer friendly" communications	We have decided to add a requirement in the ISC that the required communications between an interim supplier and an affected customer must be in in "plain and intelligible language".	Section 3.4
Written notice to vary terms and conditions	We have decided to add a requirement to provide one month's written notice to affected customers of any proposed variation or termination of the relevant terms and conditions.	Section 3.4

Issue	Proposed approach	Further information
Protection for affected customers that have paid in advance	We will consider the issue of pre-pay customers as part of our ongoing work on customer protection measures for the new market.	Section 3.4
Interpretation of “no undue preference and no undue discrimination”	We do not consider that it is necessary or expedient to provide any additional guidance at this stage on the interpretation of the “no undue preference and no undue discrimination” requirement. Compliance with this requirement will need to be reviewed on a case by case basis.	Section 3.4
Replacement of backstop interim supplier (in a retail exit area)	We recognise the issue raised and we agree that there should always be at least one backstop interim supplier in each area. However this is not currently a matter for the ISC, as we expect the backstop interim supplier status of a licensee in an Exit Area to arise from the operation of the Exit Regulations. We will review this issue if appropriate once the final Exit Regulations have been published by Defra.	Section 3.5
Timing of introduction of market-based allocation mechanism	We do not consider it necessary to defer the introduction of this mechanism. The ISC gives Ofwat appropriate discretion over when to use market-based allocation.	Section 3.6
Outstanding service requests	We consider that it will be important to develop an approach to manage outstanding service requests following an interim supplier allocation which balances the interests of customers, wholesalers and retailers. We welcome the additional suggestions as to how a process for reviewing the status and treatment of outstanding service requests could work (in addition to the various helpful suggestions already made in response to our previous consultation). We continue to consider that this is a matter for the Wholesale-Retail Code as this sets out the operational processes and service standards associated with service requests. We will therefore work with the industry, MOSL and the Interim Codes Panel to review this matter further.	Section 3.7; and February 2016 policy conclusions
Deadline for writing to affected customers	We agree that the 5 business day deadline should be linked to the receipt of the relevant customer contact information from the Market Operator, and we have amended the ISC to clarify this.	Section 3.8
ISC detailed drafting amendments	Alongside this document we have published an updated version of the Interim Supply Code, which includes a number of text changes made to reflect the conclusions described in this document and a number of other minor amendments suggested by respondents. We have published the ISC as both a clean and a tracked-changes version (changes tracked against the February version) to make it clear where we have updated the code.	Section 3.9

Issue	Proposed approach	Further information
Reminder of other ISC policy conclusions		
Whether it should be voluntary or mandatory to elect to be an eligible licensee (“opt-in”)	A licensee which is not already obliged to opt-in to the interim supply arrangements (e.g. as a result of being an acquiring licensee in an exit area) shall be free to choose whether they wish to opt-in, and the areas in respect of which they wish to do so. Accordingly we have decided not to introduce any form of mandatory opt-in or market-share threshold test at this stage. We will monitor this matter after market opening and, if we have significant concerns about the sustainability of the pool of interim suppliers, we may reconsider this issue.	February 2016 policy conclusions
Opt-in process and timing	To avoid creation of duplicate opt-in processes, a retailer shall be able to opt-in via the processes administered by the Market Operator under the Wholesale-Retail Code in order to be considered as an eligible licensee for the purposes of the interim supply arrangements as a whole. A licensee shall be entitled to exercise its voluntary opt-in right at any time, including e.g. on licence application or at any time when the licensee considers itself sufficiently established to provide an interim supply capability.	February 2016 policy conclusions
Interim supply trigger events	<p>Licence revocation shall be considered to be a relevant cessation of supply for the purposes of the interim supply arrangements.</p> <p>In order to ensure that customers and other industry participants are appropriately protected once the interim supply arrangements have been invoked, we have also decided to shorten the licence revocation timetable to provide for revocation of a WSSL licence with not less than 24 hours’ notice as a precautionary measure where there has been an insolvency event.</p> <p>Wholesale Contract termination shall be considered to be a relevant cessation of supply for the purposes of the interim supply arrangements, and that the ISC should allow for the reallocation of affected customers in only a single affected area where appropriate.</p>	February 2016 policy conclusions
Provision of information about affected customers	Ofwat will always provide (or procure the provision of) basic aggregated information on the affected customer base, and will also have the flexibility to make additional disaggregated information available where we consider this to be expedient and practicable in view of the specific circumstances of the interim supply event. At a minimum, potential interim suppliers will need to know how many customers would need to be supplied on interim supply schemes of terms and conditions in each region. However, we expect that more granular information on affected customers could be useful, as long as it could be rapidly and robustly generated, including from information within the Market Operator’s systems.	February 2016 policy conclusions

Issue	Proposed approach	Further information
Establishing the base of affected customers	We have decided not to progress a proposal to fix the base of affected customers/premises to be allocated by rejecting any new application to transfer any of the failing retailer's supply points from the date of Ofwat giving notice of the interim supply event. We consider that the potential negative impact on those customers who wished to exercise immediate choice to move to another retailer upon learning that their current retailer is failing is likely to outweigh any potential benefit to the interim supply allocation process.	February 2016 policy conclusions
Opt-out by wholesaler area and/or service category and/or customer class	We have decided that eligible licensees will generally be permitted to opt-out by area and/or service category. However, it should be noted that there will be some conditions placed on this, as explained below. We have decided not to enable eligible licensees to opt-out on any more granular basis, such as by customer class, as this would increase potential for complexity, delay, and reduced interim supply options for some classes of customer.	February 2016 policy conclusions
Unlimited opt-out right vs. potential restriction on opt-out	An opted-in licensee will be allowed to opt-out on a case-by-case basis. However, in doing so, the licensee shall be required to explain its opt-out decision with reference to a "Statement of Interim Supply Capacity" which the ISC will require it to provide to Ofwat from time to time (e.g. upon opting-in or upon a material change in circumstances affecting the licensee's capacity to take on additional customers). In order to opt-out down to within the level of its stated capacity, an eligible licensee shall be able to exercise its rights to opt-out in any combination of area and service category.	February 2016 policy conclusions
Restrictions on opt-out by an acquiring licensee	An acquiring licensee shall not be entitled to opt-out from any obligation to be a backstop interim supplier in a relevant exit area. However, we will keep this matter under review after market opening. This approach will mean that the acquiring licensee shall always be available as the default interim supplier in an exit area, ensuring equivalent protection to customers in an exit area as there would have been had the relevant undertaker not exited.	February 2016 policy conclusions
Introduction of a market-based allocation mechanism	We have decided that a simple form of market-based allocation mechanism should be introduced for market opening in April 2017, and the ISC has been developed on this basis. We consider that a simple form of market-based allocation (as described below) has the potential to deliver better outcomes for customers, is deliverable for market opening and can be designed so as not to introduce significant additional complexity or time into the overall interim supply process.	February 2016 policy conclusions

Issue	Proposed approach	Further information
Operation of a market-based allocation mechanism	We will assess the need for any market-based allocation process on a case-by-case basis using objective criteria. We intend (in the first instance at least) to seek simple price-only offers where we choose to use market-based allocation, with the non-price terms and conditions remaining as per the eligible licensee's pre-published scheme for interim supply. We have also decided that, initially at least, undertakers shall not be permitted to participate in any market-based allocation process.	February 2016 policy conclusions
Date of allocation (backdating)	We have concluded that an interim licensee shall be required to continue the supply to a customer with effect from the original date of the relevant cessation of supply by the failing retailer. This is appropriate as it provides for wholesalers and customers each to have continuity of retailer, such that there will be no interruption of valid contracts in place throughout the allocation period. This should ensure the credit risks faced by parties, including wholesalers, remains within the envelope of risks which will already be provided for through the normal regulated industry credit arrangements.	February 2016 policy conclusions
Terms and conditions under administered allocation mechanisms	<p>The ISC requires that an eligible licensee must ensure that its relevant scheme for interim supply complies with a number of principles and requirements, including:</p> <ul style="list-style-type: none"> • that no undue preference is shown to and that there is no undue preference against any affected customers compared with the eligible licensee's other customers; • that the Scheme must be consistent with the eligible licensee's obligations under the 1991 Act and its licence (this will, for example, ensure consistency with any customer code of practice which may be brought into force); and • that there shall be no restriction on an affected customer's ability to switch to another retailer, or to other terms and conditions offered by the eligible licensee. 	February 2016 policy conclusions
Power to direct eligible licensee's terms and conditions for interim supply	We have decided not to include a power in the ISC to direct all relevant retailers to use comparable terms and conditions for interim supply in each region if the differences in their individual schemes were otherwise likely to risk significant customer prejudice (i.e. "postcode lotteries"), at least initially. We shall keep this matter under review as the market develops.	February 2016 policy conclusions
Potential new charging rule for Undertakers	We have not concluded on this matter at this stage. The detail of any specific charging rules to support the ISC will need to be consulted on when we have decided upon the basic allocation processes governed by the code. We would expect to complete the statutory consultation for additional rules in good time to enable these to be in place to support the ISC from April 2017.	February 2016 policy conclusions

Issue	Proposed approach	Further information
Duration of deemed contract for interim supply	We have decided that an interim licensee shall not be entitled to vary or terminate the terms and conditions of its scheme for interim supply as it applies to an affected customer without the consent of that affected customer for a period of three months commencing from the date from which the interim licensee was required to continue the supply.	February 2016 policy conclusions
Provision of information to affected customers	The ISC shall include an obligation on an interim licensee to write to each affected customer allocated to it within five (5) business days in order to provide certain specified information.	February 2016 policy conclusions

2. Our approach and next steps

This section describes the overall approach by which we have developed our interim supply policy and the Interim Supply Code, and the next steps to implement these by market opening.

2.1 Ofwat policy objectives

In designing the regulatory arrangements for the new retail market Ofwat is required to act in accordance with the guidance it receives from the UK and Welsh Governments, but must always act in accordance with its statutory duties. Based on those statutory duties and the guidance we receive from the UK and Welsh Governments, we have developed the following four key objectives for all of our regulatory work in relation to the opening of the new retail market.

1. The new market arrangements must **promote effective competition** by:
 - not creating unnecessary or avoidable barriers to entry or expansion;
 - not creating any undue discrimination between market participants;
 - ensuring, as far as possible, that there is a level playing field between incumbents and new entrants;
 - encouraging eligible, business, charity and public sector organisations to engage with the market arrangements and support the highest levels of rivalry; and
 - supporting a seamless experience for eligible customers across England, Scotland and (where applicable) Wales.
2. The new market arrangements will **continue to protect eligible business, charity and public sector customers where things go wrong** by providing:
 - proportionate mechanisms that protect customers in the event that they are harmed through their experience of the market arrangements.
3. The new market arrangements must continue to **ensure that wholesalers remain financeable and are able to carry out their functions** by:
 - not constraining the ability of wholesalers to meet their legal obligations; and
 - allowing an efficient wholesaler to finance their functions.

4. The market arrangements must be **efficient and proportionate**. This means they must:
- be designed in a way that is economic and efficient; and
 - be proportionate, including for small market participants.

2.2 Our policy development approach

In reaching the policy conclusions set out in this document and the revised ISC, we have:

- assessed our proposals against a clear and defined set of policy objectives, to ensure an appropriate balance between these;
- fully reflected the relevant provisions within current and future legislation; and
- carefully considered the interaction of these proposals with related policy areas and instruments, including Ofwat's proposals in relation to licensing, broader customer protection measures and charging rules, as well as the draft market codes.

Our proposals have also been significantly informed by our stakeholder engagement on these matters, including the November and February consultations and an industry workshop on the interim supply arrangements, as well as prior consultations on the licensing arrangements for the new market.

As well as seeking to reflect the views of industry stakeholders, we have also developed the proposals set out in this document in consultation and co-operation with Defra and MOSL to help ensure consistency across what is an unavoidably complex set of interactions between primary and secondary legislation, licensing arrangements, Ofwat's statutory duties and the new market architecture, commercial arrangements, systems and processes. The new retail market sits within a revised **legal framework** comprising Water Act 2014 (WA14) and consequent amendments to the Water Industry Act 1991 (WIA91); together with secondary legislation including retail exit regulations being developed by Defra as well as the Wholesale Retail Code and Market Arrangements Code developed through the Open Water Programme and the Interim Supply Code and Retail Exit Code required under the WA14. As such, it has been important to ensure that the decisions we make are consistent with this framework.

2.3 Next Steps

We have now published a revised version of the ISC. This will allow potential WSSL licence applicants to be sighted on the interim supply arrangements ahead of the licence application process opening in April 2016 and the retail exit application process commencing later in the year.

Some of the decisions set out in this document will require further consideration or action, such as to progress consequential amendments to the Wholesale-Retail Code (WRC). We will work with the industry to progress these changes, including with MOSL and the Interim Codes Panel.

A number of our decisions are also contingent on the final form of the regulations that will allow undertakers voluntarily to exit the retail market for business, charity and public sector organisations (the “[Exit Regulations](#)”), on which we expect Defra to conclude shortly. If necessary we will review the ISC further following Defra’s conclusions.

3. Issues and conclusions

Respondents to the consultation on the draft ISC raised a number of substantive issues which are described in this section, together with our response in each case.

A significant number of respondents raised concerns or suggested additional measures in respect of the same issue: the proposal that the Wholesale-Retail Code (WRC) should be amended to require a wholesaler to gain the prior approval of Ofwat before a Wholesale Contract can be terminated. This is addressed in section 3.1 below.

A number of other issues or suggestions were raised by individual respondents, including in respect of: the governance of the ISC; requirements for certain information to be provided by Eligible Licensees; some customer protection provisions; and various procedural requirements and timescales set out in the code. These matters are dealt with in sections 3.2 to 3.8.

A number of respondents also provided specific suggested ISC text changes, including general drafting clarifications and corrections. Our treatment of these is explained in section 3.9.

3.1 Termination of Wholesale Contract

In the event that a retailer has its Wholesale Contract terminated by a wholesaler, this shall be a “relevant cessation of supply” for the purposes of the ISC, and shall trigger the interim supply arrangements. Our February document proposed that the Wholesale-Retail Code (WRC) should be amended to require a wholesaler to gain the prior approval of Ofwat before a Wholesale Contract can be terminated. This was to retain discretion for Ofwat over how and when to invoke the interim supply arrangements and to provide some time during which it could be established whether some other process (such as enforcement action or a trade sale) could resolve the situation in a timely manner and might better protect the interests of customers and other market participants.

Stakeholder views on this issue

Stakeholder views have always been significantly divided on this issue and the arguments have been finely balanced. A significant majority of responses to our

February consultation on the ISC raised concerns about this matter, or made suggestions about how this process might work in practice.

Those respondents who disagreed with this option considered that additional regulatory intervention in commercial arrangements between Wholesalers and Retailers would be unwarranted and could potentially increase wholesalers' bad debt exposure. Some respondents made suggestions regarding the overall process for the exercise of Ofwat's proposed power to approve terminations. For example it was suggested that rapid Ofwat decision-making would be critical to limit debt exposure, and that Ofwat should commit to a defined time limit for decisions and ensure that the wholesaler is consulted during the process. Some respondents sought clarity on how Ofwat would take account of non-payment to ensure a wholesaler is not forced to take unacceptable credit risk. It was also suggested that there could be increased scope for disputes over Ofwat's decision to grant or withhold consent to the contract termination.

Some respondents suggested alternative approaches, such as providing that a wholesaler must give advance notice to Ofwat of its intent to terminate a Wholesale Contract, or that Ofwat should take steps to monitor and enforce retailer payment obligations. A number of respondents also highlighted links to the ongoing discussions regarding credit and payment.

We continue to consider that Ofwat requires notification of the potential of a Wholesale Contract termination to allow for the timely exercise of the interim supply arrangements where required. However after further consideration of this issue we have decided that wholesalers shall not be required to gain prior approval from Ofwat for Wholesale Contract termination. Instead we have decided that an alternative approach is more appropriate, whereby a Wholesaler shall be required to provide 10 business days' notice to Ofwat that it intends to terminate a contract. We also intend to review the WRC to ensure that Ofwat is notified of relevant events that could ultimately lead to contract termination (e.g. late payments, non-payments, breach of credit requirements). We will also review the WRC to ensure that there are appropriate checks and balances regarding the circumstances and manner in which a wholesaler can exercise the right to terminate a Wholesale Contract, non-compliance with which could lead to Ofwat taking enforcement action.

This approach has the advantages of providing certainty to Wholesalers as to when contract termination will take effect, while providing earlier visibility to Ofwat of potential retailer failure, and, where necessary, to prepare for the interim supply arrangements to be exercised as expediently as possible.

We will work with the industry, MOSL and the Interim Codes Panel to ensure that the Wholesale Contract termination provisions and related matters in the Wholesale-Retail Code reflect these requirements.

3.2 ISC Governance

Under the terms of WIA91, Ofwat will be obliged to carry out periodic reviews of the ISC and, if appropriate, issue a revised code.

Stakeholder views on this issue

A small number of respondents sought further clarity on the process for future changes to the ISC. One respondent suggested that change procedures should be set out within the code itself. Another suggested that the Codes Panel should have a role in amending the ISC.

Ofwat conclusions and next steps

Under Section 63AF(5) and s 110O(5) of the WIA, Ofwat will be required to carry out periodic reviews of the ISC and, if appropriate, issue a revised code. However, unlike the Wholesale-Retail Code, where there is a process specified under Schedule 2 WA14, S66DB, there is no process specified for this purpose.

We do not consider that the ISC needs to include any specific modification procedures. The ISC is a customer protection measure that is required by legislation. We therefore consider that the ISC should be governed in the same way as similar Ofwat policy instruments. Once effective, any future modifications to the ISC will only be made following consultation, in line with Ofwat's statutory functions and duties and the scope and powers set out in legislation. We consider this the best way to ensure all views, including those of customers, will be taken into account.

The WA14 includes powers for the Secretary of State to introduce regulations that will provide for Ofwat's decisions to amend or not amend designated codes to be appealable to the CMA. However, we do not expect the ISC to be subject to CMA appeal. Defra will be launching a consultation on the draft regulations in summer 2016. This will initially relate to codes relevant to the retail authorisations and the restricted retail authorisation, but will not include the ISC.

3.3 Statement of Interim Supply Capacity

The ISC requires retailers which wish to be potential interim suppliers (known as “Eligible Licensees”) to provide and update a “Statement of Interim Supply Capacity” to Ofwat from time to time (e.g. upon opting-in or upon a material change in circumstances affecting the Eligible Licensee’s capacity to take on additional customers).

Stakeholder views on this issue

One respondent considered that the requirement to provide a Statement of Interim Supply Capacity represents additional regulatory burden and queried whether this was fully justified.

Another respondent queried whether “number of supply points” was the most appropriate measure of an organisation’s interim supply capacity. As an alternative it was suggested that the statement should require information on the scale of financial commitment which the company could take on, or should allow for the licensee to illustrate that it would be able to take on customers from a number of different customer segments.

Ofwat conclusions and next steps

We do not propose to change the ISC respect of either of these issues.

We continue to consider the Statement of Interim Supply Capacity to be a necessary feature of the interim supply arrangements. This is an important safeguard to ensure that interim supplier allocations do not result in poor outcomes for customers, nor risk placing another retailer into distress. Furthermore, we do not consider that it will be unduly onerous for an Eligible Licensee to provide and maintain the requisite information, as we would expect all retailers to have this information available in the ordinary course of operating their business.

We note that the Statement of Interim Supply Capacity already requires confirmation of an Eligible Licensee’s ability to finance the costs of serving additional interim supply customers. It also provides that the Authority may request reasonable additional information from an Eligible Licensee to support its Statement of Interim Supply Capacity. This could include the additional financial information suggested, if considered appropriate in the circumstances. We also expect to receive relevant financial information via our standard financial monitoring of companies.

3.4 Customer protections and terms of interim supply

The ISC includes a number of provisions which provide important protections for customers affected by an interim supply event. These include provisions about the terms and conditions under which the appointed interim supplier must continue supply, and obligations to provide key information to affected customers.

Stakeholder views on this issue

A small number of respondents suggested potential additional provisions to improve protections for customers affected by an interim supply event.

One respondent suggested the addition of a requirement that communication with affected customers must be in plain English to ensure that it is “customer-friendly”.

Another respondent suggested that any variation or termination of the terms and conditions for interim supply should require a minimum notice period in writing to be provided to the affected customer.

Another respondent queried whether further consideration should be given to the position of customers (particularly smaller business customers) who have paid in advance to a failing retailer and may therefore face a financial loss upon an interim supply event. However the respondent recognised that this was a wider customer protection issue and was not a matter for the ISC.

One respondent sought further guidance on interpretation of the requirement that an Eligible Licensee’s scheme of terms and conditions for interim supply should ensure that there is “no undue preference shown to and that there is no undue discrimination against any Affected Customer compared with the Eligible Licensee’s other Non-Household Customers of the same class as the Affected Customer”.

Ofwat conclusions and next steps

We have decided to add a requirement in the ISC that the required communications between an interim supplier and an affected customer must be in in plain and intelligible language.

We have also decided to add a requirement to provide one month’s written notice to affected customers of any proposed variation or termination of the relevant terms and conditions.

We will consider the issue of pre-pay customers as part of our ongoing work on customer protection measures for the new market.

We do not consider that it is necessary or expedient to provide any additional guidance at this stage on the interpretation of the “no undue preference and no undue discrimination” requirement. Compliance with this requirement will need to be reviewed on a case by case basis. The WIA91 will provide that Ofwat may give a direction that an Eligible Licensee’s terms and conditions must be modified generally or as they apply in any particular case. Therefore Ofwat will have power to intervene if it considers that an Eligible Licensee’s scheme does not comply with this requirement (or any other relevant requirement).

3.5 Replacement of backstop interim supplier

In a non-exit area, the undertaker in that area will always be obliged to be the interim supplier in the event that there is a cessation of supply unless and until such time as Ofwat directs an Eligible Licensee to continue the supply instead. In relation to an exit area, we expect the final Exit Regulations to require that at least one acquiring licensee must elect to be an eligible licensee for the purposes of interim supply. Together these provisions will ensure that there will always be at least one backstop interim supplier in each area.

Stakeholder views on this issue

One respondent noted that the ISC does not describe how an Eligible Licensee would be directed by the Authority to become the backstop interim supplier for an exit area, in the event that the acquiring licensee which previously held that obligation has failed.

Ofwat conclusions and next steps

We recognise the issue raised and we agree that there should always be at least one backstop interim supplier in each area. However this is not currently a matter for the ISC, as we expect the backstop interim supplier status of a licensee in an Exit Area to arise from the operation of the Exit Regulations. We will review this issue if appropriate once the final Exit Regulations have been published by Defra. In addition we will continually monitor the sustainability of the pool of interim suppliers in all areas after market opening.

3.6 Timing of introduction of market-based allocation mechanism

In our February document we concluded that a simple form of market-based allocation mechanism should be introduced for market opening in April 2017, and the ISC has been developed on this basis.

Stakeholder views on this issue

A number of respondents reiterated their support for the simple form of market-based allocation mechanism which has been specified in the ISC, and welcomed the decision not to progress any of the more complex options upon which we had consulted.

However, one respondent suggested that the introduction of the market-based mechanism should be deferred until 12 months after market opening to allow the market to stabilise.

Ofwat conclusions and next steps

We continue to consider that a simple form of market-based allocation has the potential to deliver better outcomes for customers, is deliverable for market opening and can be designed so as not to introduce significant additional complexity or time into the overall interim supply process. We do not consider it necessary to defer the introduction of this mechanism as the ISC gives Ofwat appropriate discretion over when to use market-based allocation.

3.7 Outstanding service requests

In our February conclusions document we stated that it will be important to develop an approach to manage outstanding service requests following an interim supplier allocation which balances the interests of customers, wholesalers and retailers. This approach will need to determine whether any outstanding service requests that the previous (failed) retailer had initiated with a wholesaler should continue following the appointment of an interim supplier, or whether there should be some alternative treatment of any such outstanding service requests under the Wholesale-Retail Code in these circumstances.

Stakeholder views on this issue

One respondent suggested that, to present a transparent picture of the potential liabilities to be covered by the interim supplier, the previous retailer should be required to provide full disclosure on all payments made by affected customers for works that have yet to conclude, or have yet to be charged by, or paid to, the relevant wholesaler. It was suggested that such disclosure should be made as soon as possible, and before the relevant interim supplier allocation concludes.

Another respondent suggested that some categories of service request should continue without being placed on hold (e.g. work linked to water quality and GSS events) and that other work should be put on hold until the retailer has had an opportunity to review and ensure that the tasks are still required and this review could be time bound (e.g. 10 business days).

Ofwat conclusions and next steps

We note that the ISC permits Ofwat to issue a request to a Previous Licensee, relevant undertaker or the Market Operator to provide relevant data or information to facilitate the implementation of the procedures set out in the ISC, including provision of information to potential interim suppliers. We do not therefore consider that any further change is required to the ISC in respect of information specifically related to outstanding service requests.

We welcome the additional suggestions on how a process for reviewing the status and treatment of outstanding service requests could work (in addition to the various helpful suggestions already made in response to our previous consultation). We continue to consider that this is a matter for the Wholesale-Retail Code as this sets out the operational processes and service standards associated with service requests. We will therefore work with the industry, MOSL and the Interim Codes Panel to review this matter further.

3.8 Deadline for writing to affected customers

The draft ISC published in February included a requirement that an appointed interim supplier must write to each of its affected customers to provide certain specified information within five business days of the date of Ofwat's direction that it is to continue supply for those customers.

Stakeholder views on this issue

One respondent queried whether the obligation to inform customers within five business days would be realistic in all circumstances and suggested the addition of the following provision: “Where this is not practicable (due, for example, to the scale of the undertaking) this information should be provided within a timeframe agreed with Ofwat”.

Another respondent noted that, under the terms of the WRC, the Market Operator has discretion to apply a different schedule for providing interim suppliers with all the relevant registration and customer details in respect of allocated supply points, in view of the potentially significant volume of data, and to avoid any adverse impact on systems performance. The respondent noted that there was therefore a possibility that there may be a delay before an interim supplier receives customer contact details. It was suggested that the deadline for writing to customer should be linked to the receipt of the necessary information from the Market Operator.

Ofwat conclusions and next steps

We continue to consider that it is important that affected customers receive timely information from the interim supplier. We have therefore retained the five business day requirement for provision of this information. However we agree that the deadline should be linked to the receipt of the relevant customer contact information and we have amended the ISC to clarify this.

3.9 ISC detailed drafting amendments

A number of respondents provided specific suggested ISC text changes. Some of the suggested amendments reflect the issues and changes described above. Other proposed changes were of a minor nature, including general drafting clarifications and corrections.

Alongside this document we have published an updated version of the Interim Supply Code, which includes the changes made to reflect the conclusions described in this document and a number of other minor amendments suggested by respondents. We have published the ISC as both a clean and a tracked-changes version (changes tracked against the February version) to make it clear where we have updated the code.

4. Further information

If you have any questions about this process or this document please email responses to retailmarketopening@ofwat.gsi.gov.uk, alternatively please feel free to contact us using the details provided below:

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Change history

Version Number	Date of Issue	Reason For Change	Change Control Reference	Sections Affected
DRAFT 20160205	05 Feb 2016	Draft for industry consultation	N/A	N/A
<u>Version 20150401</u>	<u>01 April 2016</u>	<u>For publication</u>	<u>N/A</u>	<u>Contents; Definitions; Sections: 2.2; 3.1; 3.2; 4.1; 4.2; 4.4; 4.5; 5.1; 5.2; 6.1; 7.1; 7.2; 7.4; 8.3; 9</u>

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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;
“Affected Customer”	any Non-Household Customer which is the owner or occupier of Premises in respect of which there has been a Relevant Cessation of Supply by a Previous Licensee ;
“Allocation”	the allocation of one or more Interim Duty Supply Points to an Eligible Licensee or relevant undertaker in accordance with Section 7 of this code, and “Allocate” and “Allocated” shall be construed accordingly;
“Allocation Notice”	the notice issued by the Authority in accordance with Section 7.4 of this code;
“Area”	any area for which an instrument of appointment has been granted to a relevant undertaker;
“Authority”	the Water Services Regulation Authority, also known as Ofwat, established by section 1A of the 1991 Act;
“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"	the meaning given in the Wholesale-Retail Code;
“Credit Support”	the meaning given in the Wholesale-Retail Code;
“Date of Relevant Cessation of Supply”	the date determined by the Authority in accordance with Section 5.2 of this code to be the date on which a Previous Licensee ceased to supply any Premises with Water Retail Services and/or Sewerage Retail Services for the purposes of section 63AC and/or section 110L of the 1991 Act;
“Defaulting Trading Party”	the meaning given in the Wholesale-Retail Code;

Definitions	
Term	Definition
"Delivery Hours"	the meaning given in the Wholesale-Retail Code; means 09:00 to 17:00 on a day which is not 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;
"Deregistered"	the meaning given in the Wholesale-Retail Code;
"Disconnected"	the meaning given in the Wholesale-Retail Code;
"Election"	an election to be an Eligible Licensee, and "Elect", "Elects" and "Elected" shall be construed accordingly;
"Eligibility Guidance"	the guidance document issued by the Authority under s17A of the 1991 Act;
"Eligible Licensee"	A <u>a</u> Licensee with a retail authorisation or a restricted retail authorisation who has elected to be an eligible licensee in accordance with this code for the purposes of section 63AC and/or section 110L of the 1991 Act;
"Exit Regulations"	any regulations made under section 42 of the Water Act 2014 from time to time;
"Incoming Retailer"	the meaning given in the Wholesale-Retail Code;
"Insolvency Event"	the meaning given in the Wholesale-Retail Code;
"Interim Duty Supply Point"	A <u>a</u> Supply Point which relates to Premises in respect of which there has been a cessation of supply of Water Retail Services and/or Sewerage Retail Services by a Previous Licensee for the purposes of section 63AC and/or section 110L of the 1991 Act;
"Interim Licensee"	an Eligible Licensee which has been directed by the Authority to continue the supply of Water Retail Services and/or Sewerage Retail Services to Premises under section 63AC(3) or section 110L(3) of the 1991 Act;
"Interim Supplier Allocation Process"	the meaning given in the Wholesale-Retail Code;
"Interim Supply Code"	This <u>this</u> document, being a code of that name issued by the Authority under sections 63AF and 110O of the 1991 Act, including any revisions to that code issued by the Authority from time to time;
"Interim Supply"	the continuation of the supply of Water Retail Services and/or Sewerage Retail Services to a Premises by an

Definitions	
Term	Definition
	Eligible Licensee or a relevant undertaker other than a Previous Licensee following a Relevant Cessation of Supply to that Premises by that Previous Licensee ;
“Interim Supply Offer”	an offer submitted to the Authority by an Eligible Licensee in accordance with Section 7.2 of this code and which sets out the terms upon which that Eligible Licensee would be willing to undertake Interim Supply in the event that it was directed to do so by the Authority;
“Licence”	a water supply licence or a sewerage licence issued under section 17A or 17BA of the 1991 Act as applicable;
“Licensee”	the holder of a Licence;
“List of Eligible Licensees”	the List of Opted In Retailers by Area for the purposes of the Interim Supplier Allocation Process maintained and published by the Market Operator in accordance with the relevant provisions of the Wholesale-Retail Code;
“List of Opted In Retailers by Area”	the meaning given in the Wholesale-Retail Code;
“Market Operator”	the meaning given in the Wholesale-Retail Code;
“New Supply Point”	the meaning given in the Wholesale-Retail Code;
“Non-Household Customer”	a person who may be identified as the customer of a Retailer Licensee for any Premises in accordance with the relevant Eligibility Guidance;
“Notice of Relevant Cessation of Supply”	the notice issued by the Authority in accordance with Section 6 of this code;
“Opted In Retailer”	for the purposes of being eligible in relation to the allocation of Supply Points pursuant to the Interim Supply Code, a Retailer who has opted in pursuant to Section 4.3.9 of the Market Terms in the Wholesale-Retail Code;
“Premises”	the meaning given in the Wholesale-Retail Code; eligible premises other than Household Premises and which may be identified as eligible premises in accordance with the relevant Eligibility Guidance;
“Previous Licensee”	The the Licensee or former holder of a Licence which has ceased or which shall cease (as applicable) to

Definitions	
Term	Definition
	supply Premises with Water Retail Services and/or Sewerage Retail Services for the purposes of section 63AC and/or section 100L of the 1991 Act;
“ Registration Register”	the meaning given in the Wholesale Retail Code, and “Register” and “Registered” shall be construed in accordance with the definition of “Registration” in the Wholesale Retail Code, and “Registered” shall be construed accordingly;
“Relevant Cessation of Supply”	a cessation of supply of Water Retail Services and/or Sewerage Retail Services to Premises by a Previous Licensee for the purposes of section 63AC and/or section 110L of the 1991 Act as a result of: <ul style="list-style-type: none"> (a) revocation of the Previous Licensee’s Licence in circumstances other than where the Licensee has consented to the revocation; or (b) termination of a Wholesale Contract as a consequence of the Previous Licensee being a Defaulting Trading Party in accordance with the provisions of the Wholesale-Retail Code; or (c) the relevant undertaker not being obliged to continue the supply of water in the circumstances set out in section 63AD(1) of the 1991 Act.
“Scheme”	a scheme or schemes of terms and conditions for interim supply made by an Eligible Licensee under section 63AE or section 110N of the 1991 Act;
“Self-Supply Licensee”	a Licensee whose retail authorisation relates only to the Licensee and/or persons associated with the Licensee;
“Service Category”	the meaning given in the Wholesale-Retail Code;
“Sewerage Retail Services”	those activities authorised by a sewerage licence with a retail authorisation;
“Statement of Interim Supply Capacity”	the document provided by an Eligible Licensee in accordance with Section 4.2 of this code and in such form as may be prescribed by the Authority from time to time;
“Supply Point”	the meaning given in the Wholesale-Retail Code;
“Suspension Deadline”	the time by which any Eligible Licensee entitled temporarily to suspend its Election in respect of any

Definitions	
Term	Definition
	potential Allocation following a Relevant Cessation of Supply must do so, as specified within the relevant Notice of Relevant Cessation of Supply;
“Suspension”	the temporary suspension of an Election, either: <ul style="list-style-type: none"> (a) by an Eligible Licensee until such time as all Interim Duty Supply Points identified in a single Notice of Relevant Cessation of Supply have been Allocated; or (b) as a result of an Eligible Licensee having its status as an Opted in Retailer temporarily suspended in the circumstances set out in the Wholesale-Retail Code following an Insolvency Event; and “Suspend” and “Suspended” shall be construed accordingly;
“Trade Effluent Services”	the meaning given in the Wholesale-Retail Code;
“Water Retail Services”	the activities authorised by a water supply licence with a retail authorisation and/or a restricted retail authorisation;
“Wholesale Charges”	the meaning given in the Wholesale-Retail Code;
“Wholesale Contract”	the meaning given in the Wholesale-Retail Code;
“Wholesale-Retail Code”	the code of that name issued by the Authority under sections 66DA and 117F of the 1991 Act, as amended from time to time.

1.2 Interpretation

1.2.1 In this Interim Supply Code:

- (a) References to ‘this code’ are to this Interim Supply Code;
- (b) References to ‘Sections’ are to sections of this Interim Supply Code unless otherwise expressly stated;
- (c) Words imparting a gender include every gender and references to the singular include the plural and vice versa;

- (d) 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;
- (e) Save as otherwise expressly provided references to time are to local time;
- (f) References to 'writing' or 'written' shall include email;
- (g) References to 'day' and 'calendar day' mean the same as one another;
- (h) References to the Interim Supply Code or any other document are to this Interim Supply 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 Interim Supply Code or that document (as the case may be);
- (i) 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;
- (j) 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;

- (k) References to a person shall, except where the context requires otherwise, include its successors in title and permitted assignees;
- (l) 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~~
- (m) Any words or expressions used in the 1991 Act or the Water Act 2014 shall, unless the contrary intention appears, have the same meaning when used in the Interim Supply Code~~;~~
- (n) The headings and contents table in the Interim Supply Code are for convenience only and do not affect its interpretation~~;~~
- (o) In the Interim Supply 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~~;~~ and
- (p) In the Interim Supply 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 Interim Supply Code issued by the Authority pursuant to sections 63AF and 110O of the 1991 Act.
- 2.1.2 This code should be read in conjunction with the relevant provisions of the 1991 Act, the Water Act 2014, the Wholesale-Retail Code and the Exit Regulations.

2.2 Scope of this code

2.2.1 This Interim Supply Code makes provision about the following matters in particular:

- (a) Part A of this code:
 - (i) sets out the procedure for electing to be an Eligible Licensee for the purposes of section 63AC and/or section 110L of the 1991 Act;
 - (ii) sets out the procedure for removal of such an Election or the temporary suspension of such an Election in accordance with section 63AC(5)(b) and/or section 110L(5)(b) of the 1991 Act;
- (b) Part B of this code:
 - (i) describes the circumstances in which the Authority's power of direction under section 63AC(3) or -section 110L(3) of the 1991 Act may be exercised;
 - (ii) describes how the Authority will determine the date on which a Previous Licensee ceased to supply Premises with Water Retail Services and/or Sewerage Retail Services for the purposes of section 63AC and/or -section 110L of the 1991 Act;
 - (iii) provides for the Authority to issue a Notice of Relevant Cessation of Supply and certain accompanying information;
 - (iv) describes the basis on which the Authority may decide to Allocate Interim Duty Supply Points;
- (c) Part C of this code:
 - (i) sets out various requirements applying to the terms and conditions contained in any Scheme made under section 63AE or -section 110N of the 1991 Act;

- (ii) sets out obligations on an Interim Licensee to inform Affected Customers of its applicable Scheme(s) ~~of Terms and Conditions for Interim Supply~~ and various other matters.

3. General

3.1 Duties under this code

3.1.1 In carrying out its duties under this code, a Licensee (including for these purposes a Previous Licensee; Eligible Licensee or Interim Licensee) or relevant undertaker, as applicable, shall use all reasonable endeavours to:

- (a) co-operate with the Authority, the Market Operator, any other Licensee and any relevant undertaker as necessary in order to facilitate the orderly functioning of the arrangements set out in this code;
- (b) provide all data and other information in the format and timescales required by this code; and
- (c) make all relevant communications in the format and timescales required by this code.

3.2 Notices

3.2.1 All notices to be given to any Eligible Licensee by the Authority under this code shall be marked for the attention of the person or persons notified to the Authority in accordance with Section 4.6 of this code.

3.2.2 All notices to be given to any party under this code shall be in writing.

3.2.3 -A notice shall be treated as having been received:

- (a) if delivered by hand (including courier) within Delivery Hours, when so delivered; and if delivered by hand outside Delivery Hours, at the next start of Delivery Hours;

- (b) if sent by first class pre-paid post, guaranteed next day delivery, post with delivery confirmation or receipt (for example, special delivery) on the later of actual receipt and 9.00 am on the Business Day after posting if posted on a Business Day, and on the later of actual receipt and 9.00 am on the second Business Day after posting if not posted on a Business Day; and
- (c) if sent by e-mail, or any other electronic means during a Business Day it is received on that Business Day and if it is ~~received~~ sent outside of a Business Day it is received on the following Business Day.

3.2.4 In proving that a notice has been given it shall be conclusive evidence to demonstrate that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).

PART A: ELIGIBLE LICENSEES

4. Election, removal and temporary suspension of Eligible Licensee status

4.1 Electing to be an Eligible Licensee

- 4.1.1 A Licensee which does not have a legal obligation to Elect to be an Eligible Licensee may Elect to be an Eligible Licensee at any time, in accordance with the further provisions of this code.
- 4.1.2 A Licensee which has a legal obligation to Elect to be an Eligible Licensee shall do so in accordance with the further provisions of this code.
- 4.1.3 The manner in which a Licensee shall Elect to be an Eligible Licensee shall be by submitting a notification to the Market Operator to be an Opted In Retailer for the purposes of the Interim Supplier Allocation Process, in accordance with the relevant provisions of the Wholesale-Retail Code.
- 4.1.4 The notification submitted to the Market Operator shall include:
- (a) the Area or Areas in relation to which the Licensee is Electing to be an Eligible Licensee;
 - (b) in respect of each such Area whether it is to be an Eligible Licensee in relation to Water Retail Services or Sewerage Retail Services or both.
- 4.1.5 Within a reasonable time of Electing ~~At the same time as it Elects~~ to be an Eligible Licensee, a Licensee shall confirm to the Authority in writing that:
- (a) it has made a Scheme for each Service Category and each Area in respect of which it is electing to be an Eligible Licensee;
 - (b) it has provided a copy of the Scheme to the Authority; and
 - (c) it has published the Scheme on its website.

4.2 Statement of Interim Supply Capacity

4.2.1 An Eligible Licensee shall make and from time to time revise a Statement of Interim Supply Capacity.

4.2.2 The Statement of Interim Supply Capacity shall include the following information:

- (a) the Area or Areas in which the Eligible Licensee has capacity within its business to provide Interim Supply of Water Retail Services and/or Sewerage Retail Services to Affected Customers in the event that it is directed to do so by the Authority in accordance with section 63AC(3) and/or section 110L(3) of the 1991 Act;
- (b) for each such Area, the maximum number of additional Supply Points of each Service Category in respect of which it has such capacity to provide Interim Supply or whether there is no such limit;
- (c) the maximum total number of additional Supply Points of each Service Category in respect of which it has capacity to provide Interim Supply across all Areas in respect of which it is an Eligible Licensee;
- (d) confirmation that the Eligible Licensee would be able to finance any additional costs to its business associated with the provision of Interim Supply to the maximum number of additional Supply Points indicated above, including (but not limited to) the costs of Wholesale Charges and Credit Support for which the Eligible Licensee would be liable under the terms of the Wholesale-Retail Code;
- (e) confirmation that the Eligible Licensee would be able to provide Interim Supply to the maximum number of additional Supply Points which it has indicated without materially affecting its supply of Water Retail Services and/or Sewerage Retail Services to its existing Non-Household Customers;
- (f) the reasons for any limitation on the number of additional Supply Points in respect of which the Eligible Licensee has capacity to provide Interim Supply;

- (g) any expected material increase or decrease in the Eligible Licensee's capacity to provide Interim Supply and the reasons and expected timing for any such change;
- (h) confirmation that the Eligible Licensee has suitable arrangements in place that would enable it to provide the information to Affected Customers in a full and timely manner, as required under ~~section~~ Section 9 of this code; and
- (i) confirmation that the Eligible Licensee has suitable arrangements in place that would enable it to provide Affected Customers with timely and accurate bills.

4.2.3 An Eligible Licensee shall provide a copy of its current or revised Statement of Interim Supply Capacity to the Authority in each of the following circumstances:

- (a) at the same time as it first Elects to be an Eligible Licensee;
- (b) at the same time as it Elects to be an Eligible Licensee in respect of any additional Areas and/or Service Categories;
- (c) promptly following any change in circumstances that materially affects the Eligible Licensee's capacity to provide Interim Supply;
- (d) at the same time as the Eligible Licensee Suspends its Election in accordance with the further provisions of this code;
- (e) prior to the Eligible Licensee removing its Election in respect of one or more Service Categories and/or Areas in accordance with the further provisions of this code; and
- (f) upon request by the Authority at any time and within the timescales specified in the request.

4.2.4 The Authority may at any time request in writing reasonable additional information or evidence from an Eligible Licensee to support its Statement of Interim Supply Capacity. An Eligible Licensee shall respond to any such request within the timescale specified by the Authority in any such request.

4.3 Removal of Election

- 4.3.1 An Eligible Licensee that no longer wishes to be an Eligible Licensee in respect of any Area and/or Service Category shall be entitled to remove its Election in respect of one or more Service Categories and/or Areas at any time, subject to the further provisions of this section.
- 4.3.2 Prior to removing its Election in respect of one or more Service Categories and/or Areas, an Eligible Licensee shall provide a revised Statement of Interim Supply Capacity to the Authority together with an explanation of the Eligible Licensee's reasons for removing or amending its Election, with reference to the revised Statement of Interim Supply Capacity.
- 4.3.3 An Eligible Licensee may remove its Election in respect of one or more Service Categories and/or Areas by submitting a notification to the Market Operator to that effect in accordance with the relevant provisions of the Wholesale-Retail Code.
- 4.3.4 The notification shall include:
- (a) the Area or Areas in relation to which its Election is to be removed; and
 - (b) in respect of each such Area whether it wishes remove its Election in relation to Water Retail Services and/or Sewerage Retail Services or both.

4.4 Suspension of Election following a Notice of Relevant Cessation of Supply

- 4.4.1 An Eligible Licensee may Suspend its Election in respect of one or more Service Categories and/or Areas following the issue by the Authority of a Notice of Relevant Cessation of Supply, subject to the further provisions of this section.
- 4.4.2 The Authority shall not direct an Eligible Licensee to provide Interim Supply in respect of any Interim Duty Supply Points which relate to any Area and/or Service Category in respect of which the Eligible Licensee has Suspend its Election.

- 4.4.3 A Notice of Relevant Cessation of Supply issued by the Authority shall specify the Suspension Deadline. This deadline may be on the same day that the relevant Notice of Relevant Cessation of Supply is issued.
- 4.4.4 Any Retailer wishing to Suspend its Election shall send a notification to that effect to the Authority in accordance with the Notice of Relevant Cessation of Supply and to the Market Operator in accordance with the relevant provisions of the Wholesale-Retail Code.
- 4.4.5 Any notification that is received by either the Authority or the Market Operator after the deadline specified in the relevant Notice of Relevant Cessation of Supply shall not have any effect unless otherwise directed by the Authority.
- 4.4.6 The details that the Eligible Licensee shall be required to provide in its notification of Suspension shall include:
- (a) confirmation that it wishes to Suspend its Election in relation to the specified Notice of Relevant Cessation of Supply;
 - (b) the Area(s) in respect of which it wishes to Suspend its Election; and
 - (c) whether it wishes to Suspend its Election in relation to Water Retail Services or Sewerage Retail Services or both in each such Area.
- 4.4.7 At the same time that an Eligible Licensee sends notification to the Market Operator to Suspend its Election, the Eligible Licensee shall provide a revised Statement of Interim Supply Capacity to the Authority together with an explanation of the Eligible Licensee's reasons for Suspending its Election, with reference to the revised Statement of Interim Supply Capacity.
- 4.4.8 An Eligible Licensee shall be deemed by the Authority to have Suspended its Election in the event that its status as an Opted in Retailer has been suspended in the circumstances set out in the Wholesale-Retail Code following an Insolvency Event.
- 4.4.84.4.9 Following the Allocation of all the Interim Duty Supply Points identified in the Notice of Relevant Cessation of Supply, an Eligible Licensee which had Suspended its Election in relation to that Notice of Relevant

Cessation of Supply shall immediately become an Eligible Licensee for each Area and/or Service Category that was affected by the Suspension, in accordance with its Election as an Opted-In Retailer.

4.4.9

4.5 Contact Details

4.5.1 An Eligible Licensee shall provide the Authority with the contact details of the person(s) within its organisation to whom all notices, information and directions issued under this code shall be sent. This information shall be provided at the same time as an Eligible Licensee first Elects to be an Eligible Licensee and shall be updated following any change to the relevant contact details. This information shall include contact details for use outside of Delivery Hours where this is necessary in view of the urgency of a Relevant Cessation of Supply event. It is the responsibility of the Eligible Licensee to keep contact details up to date.

PART B: PROCEDURE FOLLOWING A RELEVANT CESSATION OF SUPPLY

5. Relevant Cessation of Supply

5.1 Circumstances in which the Authority's power of direction may be exercised

5.1.1 The Authority shall only use its power under section 63AC and/or section 110L of the 1991 Act to direct an Eligible Licensee to provide Interim Supply in respect of any Premises in the following circumstances:

- (a) there has been a Relevant Cessation of Supply ~~by a Previous Licensee~~ in relation to the Premises;
- (b) that Previous Licensee is not a Self-Supply Licensee; and
- (c) an Interim Duty Supply Point relating to the Premises has been Allocated to the Eligible Licensee in accordance with this code.

5.2 Date of Relevant Cessation of Supply

5.2.1 The Authority shall determine the Date of Relevant Cessation of Supply in relation to each Relevant Cessation of Supply.

5.2.2 The Date of Relevant Cessation of Supply shall be:

- (a) the date on which the relevant Previous Licensee's Licence was (or will be) revoked, as set out in the relevant revocation notice issued by the Authority; or
- (b) the date on which a Wholesale Contract between the relevant Previous Licensee and a relevant undertaker was terminated ~~with the consent of the Authority, such consent having been sought in accordance with the provisions of the Wholesale Retail Code.~~

6. Notice of Relevant Cessation of Supply

6.1 Issue of Notice of Relevant Cessation of Supply in respect of which the Authority proposes to give a direction to an Eligible Licensee

- 6.1.1 The Authority shall issue a Notice of Relevant Cessation of Supply where:
- (a) there has been a Relevant Cessation of Supply in respect of which the Authority proposes to give a direction under section 63AC(3) or section 110L(3) of the 1991 Act; or
 - (b) a Relevant Cessation of Supply will occur at a date specified in a Licence revocation notice which has already been issued or which is issued at the same time as the Notice of Relevant Cessation of Supply and the Authority proposes to give a direction under section 63AC(3) or section 110L(3) of the 1991 Act in respect of such Relevant Cessation of Supply.
- 6.1.2 The Authority shall send a copy of the Notice of Relevant Cessation of Supply to each Eligible Licensee which is identified in the List of Eligible Licensees on the date on which the Notice of Relevant Cessation of Supply is issued and is eligible for at least one relevant combination of Area and Service Category in respect of the Relevant Cessation of Supply.
- 6.1.3 At the same time, the Authority shall also send a copy of the Notice of Relevant Cessation of Supply to:
- (a) each relevant undertaker in whose Area there is an Interim Duty Supply Point; and
 - (b) the Market Operator.
- 6.1.4 The information to be included in a Notice of Relevant Cessation of Supply shall include (but need not be limited to):
- (a) the identity of the Previous Licensee which has ceased or which shall cease to supply Premises as of the Date of Relevant Cessation of Supply;

- (b) the Date of Relevant Cessation of Supply, which may be a date in the future in the circumstances described in Section 6.1.1(b) of this code; and
- (c) the Suspension Deadline, ~~and~~ which in urgent circumstances ~~the Suspension Deadline~~ may be on the same day that the Notice of Relevant Cessation of Supply is issued.

6.1.5 The Authority shall provide the following information to all recipients of a Notice of Relevant Cessation of Supply and/or procure that the following information is otherwise made available to the recipients:

- (a) the Area(s) in which the Relevant Cessation of Supply has occurred or shall occur; and
- (b) the number (or expected number) of Interim Duty Supply Points of each Service Category in each Area in respect of which the Relevant Cessation of Supply has occurred or shall occur.

6.1.6 The above information shall be made available prior to the deadline specified within the Notice of Relevant Cessation of Supply by which any Eligible Licensee entitled to Suspend its Election in respect of the Relevant Cessation of Supply must do so.

6.1.7 In addition to the information specified above, the Authority may provide such additional information as it considers appropriate in the particular circumstances and/or procure that such additional information is otherwise made available to the recipients. This additional information could include, but need not be limited to:

- (a) the number of Interim Duty Supply Points in each Area subject to a particular Wholesale Tariff;
- (b) the meter read history of the ~~of~~ Interim Duty Supply Points;
- (c) the number of Interim Duty Supply Points in each Area which receive Trade Effluent Services; and
- (d) disaggregation of the number of Interim Duty Supply Points in each Area, such as by size or type of customer.

6.2 Issue of Notice of Relevant Cessation of Supply in respect of which the Authority does not propose to give a direction to an Eligible Licensee

6.2.1 The Authority shall issue a Notice of Relevant Cessation of Supply where:

- (a) there has been a Relevant Cessation of Supply in respect of which the Authority does not propose to give a direction under section 63AC(3) or -section 110L(3) of the 1991 Act; or
- (b) a Relevant Cessation of Supply will occur at a date specified in a Licence revocation notice which has already been issued or which is issued at the same time as the Notice of Relevant Cessation of Supply and the Authority does not propose to give a direction under section 63AC(3) or section 110L(3) of the 1991 Act in respect of such Relevant Cessation of Supply.

6.2.2 The Authority shall send a copy of a Notice of Relevant Cessation of Supply issued pursuant to Section 6.2.1 to the recipients identified in Sections 6.1.2 and 6.1.3 of this code.

6.2.3 The information to be included within a Notice of Relevant Cessation of Supply issued pursuant to this Section 6.2 shall include (but need not be limited to):

- (a) the identity of the Previous Licensee which has ceased or which shall cease to supply Premises as of the Date of Relevant Cessation of Supply;
- (b) the Date of Relevant Cessation of Supply, which may be a date in the future in the circumstances described in Section 6.2.1(b) of this code; and
- (c) the Area(s) in which the Relevant Cessation of Supply has occurred or will occur.

6.2.4 Where section 63AC(2) or section 110L(2) of the 1991 Act applies and the Authority notifies the Market Operator that no direction is to be made under section 63AC(3) or section 110L(3) of the 1991 Act, the Market Operator shall Register the Interim Duty Supply Points to the relevant undertaker for the Area in which the relevant Premises are located with

effect from the Date of Relevant Cessation of Supply, in accordance with the provisions of the Wholesale-Retail Code.

6.3 Use of Information

6.3.1 An Eligible Licensee shall only use the information provided pursuant to Section 6.1 of this code for the purposes of making a decision about whether it intends to Suspend its Election in relation to the notified Relevant Cessation of Supply or to make an Interim Supply Offer.

6.3.2 An Eligible Licensee shall comply with all applicable law in relation to such information.

6.4 Request for information from market participants and Market Operator

6.4.1 The Authority may issue a request to a Previous Licensee, relevant undertaker or Market Operator to provide relevant data or information to facilitate the provision of the information specified in Section 6.1 of this code.

6.4.2 This provision shall be without prejudice to any other rights in law under which the Authority is entitled to request information from Licensees or any other party.

7. Allocation of Interim Duty Supply Points

7.1 Selection of method of Allocation by Authority

7.1.1 The following provisions shall apply where the Authority has issued a Notice of Relevant Cessation of Supply in respect of which the Authority proposes to give a direction to an Eligible Licensee.

7.1.2 Only those Eligible Licensees identified in Section 6.1.2 of this code shall be eligible to be given such a direction under section 63AC(3) or -section

110L(3) of the 1991 Act in respect of the notified Relevant Cessation of Supply.

7.1.3 After the relevant Suspension Deadline has passed, the Authority may decide in respect of each relevant Area or combination of relevant Areas:

- (a) that it is minded to make a direction or directions for one or more relevant Areas or for any combination of relevant Areas on the basis of Interim Supply Offers sought from relevant Eligible Licensees in accordance with the process set out in Section 7.2 of this code; or
- (b) to request the Market Operator to allocate the relevant Interim Duty Supply Points in one or more relevant Areas by implementing the Interim Supplier Allocation Process in accordance with the process set out in Section 7.3 of this code and the relevant provisions of the Wholesale-Retail Code following which a direction will be made to give effect to the outcome of that process; or
- (c) that- it no longer proposes to direct an Eligible Licensee under section 63AC(3) or -section 110L(3) of the 1991 Act to continue the supply in respect of the relevant Interim Duty Supply Points in one or more relevant Areas; or
- (d) that the Allocation of the relevant Interim Duty Supply Points should be undertaken on the basis of any combination of (a), (b) or (c) above.

7.1.4 The Authority may issue guidance setting out any criteria or other considerations that it shall use to select the most appropriate method of Allocation on a case by case basis.

7.2 Interim Supply Offers

7.2.1 This Section shall apply where the Authority decides pursuant to Section 7.1.3(a) of this code that it is minded to make an Allocation and direction or directions in respect of a relevant Area or any combination of relevant Areas on the basis of Interim Supply Offers sought from relevant Eligible Licensees.

- 7.2.2 The purpose of seeking Interim Supply Offers in respect of a relevant Area or combination of relevant Areas (as applicable) shall be to Allocate all of the Interim Duty Supply Points within any such Area or combination of Areas to a single Eligible Licensee.
- 7.2.3 In respect of each such Area or combination of Areas (as applicable) the Authority shall invite each relevant Eligible Licensee to submit an Interim Supply Offer where that Eligible Licensee:
- (a) has not Suspended its Election in respect of the relevant Area or any Area within a combination of Areas in respect of which the Interim Supply Offer is being sought; and
 - (b) has indicated in its most recently submitted Statement of Interim Supply Capacity that it has the ability to provide Interim Supply to all of the Affected Customers within the Area or combination of Areas in respect of which the Interim Supply Offer is being sought.
- 7.2.4 The Authority shall confirm in the Interim Supply Offer invitation to each relevant Eligible Licensee:
- (a) the Area or combination of Areas in respect of which the Interim Supply Offer is being sought;
 - (b) the required format and content of the Interim Supply Offer; and
 - (c) the deadline by which any Interim Supply Offer must be submitted in order to be considered.
- 7.2.5 In respect of each Area or each combination of Areas (as applicable) in respect of which Interim Supply Offers have been invited, the Authority will take the following steps:
- (a) consider all the Interim Supply Offers received;
 - (b) Allocate all of the Interim Duty Supply Points within ~~the~~each relevant Area or each combination of Areas (as applicable) to a single Eligible Licensee on the terms set out in the Interim Supply Offer submitted by that Eligible Licensee; and

- (c) issue a direction under section 63AC(3) or -section 110L(3) of the 1991 Act to give effect to this decision.

7.2.6 The Authority may issue guidance setting out the expected format and content of Interim Supply Offers and the criteria or other considerations that it will use to select the Interim Supply Offer it considers offers the best terms of Interim Supply for Affected Customers in each case.

7.2.7 After consideration of all the Interim Supply Offers received in respect of each relevant Area or combination of Areas (as applicable), the Authority may decide that the Interim Duty Supply Points in any such Area or combination of Areas shall be Allocated using one of the other methods set out in Section 7.1.3 of this code. In these circumstances the Authority will either:

- (a) instruct the Market Operator to implement the Interim Supplier Allocation Process in respect of these Interim Duty Supply Points in accordance with Section 7.3 of this code; or
- (b) instruct the Market Operator to ~~register~~ **Register** these Interim Duty Supply Points to the relevant undertaker(s) in accordance with the notice issued under Section 7.4 of this code.

7.2.8 In the event that the Authority decides that the relevant Interim Duty Supply Points shall be Allocated -using -one of the other methods set out in Section 7.1.3 of this code, such Allocation shall be undertaken for each relevant Area independently, and any combination of Areas which may previously have been used for the purposes of inviting Interim Supply Offers shall no longer be relevant.

7.3 Particular provisions about use of the Interim Supplier Allocation Process under the Wholesale-Retail Code

7.3.1 The following provisions shall apply where the Authority has decided pursuant to Sections 7.1 or 7.2 of this code that any Interim Duty Supply Points shall be Allocated by the Market Operator on the basis of the Interim Supplier Allocation Process.

7.3.2 In these circumstances the Authority shall:

- (a) notify the Market Operator of each Area in respect of which Interim Duty Supply Points are to be Allocated on the basis of the Interim Supplier Allocation Process;
- (b) instruct the Market Operator to implement the Interim Supplier Allocation Process in respect of each such Area; and
- (c) notify the Market Operator of the timetable within which the Interim Supplier Allocation Process is to be completed.

7.4 Notification and implementation of Allocation

- 7.4.1 The Authority shall notify all relevant Eligible Licensees, relevant undertakers and the Market Operator by issuing an Allocation Notice setting out its Allocation decision(s).
- 7.4.2 The Allocation Notice shall include for each relevant Area or combination of Areas the following information:
 - (a) whether the Authority has made a direction(s) pursuant to section 63AC(3) and/or section 110L(3) of the 1991 Act to direct one or more Interim Licensees to continue supply and/or whether section 63AC(2) or section 110L(2) of the 1991 Act applies and no direction has been made under section 63AC(3) or section 110L(3) of the 1991 Act and that the relevant ~~supply~~ Supply points ~~Points~~ should be ~~registered~~ Registered to the relevant undertaker(s) for the Area(s) in which the Eligible Premises are situated;
 - (b) identification of the Interim Duty Supply Points Allocated to each Interim Licensee or relevant undertaker as applicable; and
 - (c) the Date of Relevant Cessation of Supply.
- 7.4.3 The Market Operator shall Register the Allocated Interim Duty Supply Points to the relevant Interim Licensee(s) and/or relevant undertaker(s) in respect of each Area as applicable with effect from the Date of Relevant Cessation of Supply.
- 7.4.4 In all cases the Interim Duty Supply Points to be Registered to the relevant Interim Licensee(s) ~~shall~~:

- (a) shall include Supply Points Registered to the Previous Licensee at the Date of Relevant Cessation of Supply including those in the process of being Deregistered or Disconnected; and
- (b) shall include New Supply Points in the process of being Registered to the Previous Licensee at the Date of Relevant Cessation of Supply; but
- (c) shall not include Supply Points in the process of being Registered to an Incoming Retailer at the Date of Relevant Cessation of Supply.

PART C: BASIS OF INTERIM SUPPLY BY AN INTERIM LICENSEE

8. Provisions about Schemes ~~of Terms and Conditions for Interim Supply~~

8.1 Date from which a Scheme shall apply to an Affected Customer

8.1.1 The date from which an Interim Licensee shall be required to continue the supply of Water Retail Services and/or Sewerage Retail Services to a Premises by way of a direction under section 63AC(3) or section 110L(3) of the 1991 Act shall be the Date of Relevant Cessation of Supply.

8.1.2 In the absence of alternative terms and conditions being agreed between an Interim Licensee and an Affected Customer, the Interim Licensee's applicable Scheme shall be the basis upon which it shall provide Interim Supply to any such Affected Customer from the Date of Relevant Cessation of Supply.

8.2 Modification of a Scheme by an Interim Supply Offer

8.2.1 In the event that an Interim Licensee has been directed by the Authority to continue supply to an Affected Customer as a result of an Interim Supply Offer having been accepted in accordance with Section 7.2 of this code then:

- (a) In the absence of alternative terms and conditions being agreed between an Interim Licensee and the Affected Customer, the terms and conditions on which the Interim Licensee shall provide Interim Supply to the Affected Customer shall be its Scheme as modified by the terms of the relevant Interim Supply Offer;
- (b) the Authority shall give a direction to the Interim Licensee that its Scheme must be so modified; and
- (c) any such modification shall only apply in respect of the provision of Interim Supply to the Premises that were the subject of the relevant Interim Supply Offer and this shall be without prejudice to the

application of the Eligible Licensee's Scheme in any other circumstances.

8.3 General requirements in respect of Schemes ~~of Terms and Conditions for Interim Supply~~

8.3.1 In the making or revision of its Scheme, an Eligible Licensee shall ensure that its Scheme complies with the following:

- (a) the Eligible Licensee shall ensure that the price terms within the Scheme are reasonable in the circumstances;
- (b) the Eligible Licensee shall ensure that there is no undue preference shown to and that there is no undue discrimination against any Affected Customer compared with the Eligible Licensee's other Non-Household Customers of the same class as the Affected Customer;
- (c) the Scheme must be consistent with the Eligible Licensee's obligations under the 1991 Act and its Licence;
- (d) the Interim Licensee shall not vary or terminate the terms and conditions of its Scheme as it applies to an Affected Customer without the consent of that Affected Customer for a period of three (3) months commencing from the date from which the Interim Licensee was required to continue the supply of Water Retail Services and/or Sewerage Retail Services to that Affected Customer's Premises by way of a direction under section 63AC(3) or section 110L(3) of the 1991 Act and subject to the Interim Licensee providing the Affected Customer one (1) months' notice in writing of such variation or termination; and
- (e) other than the right of an Eligible Licensee to submit a Cancellation Request to the Market Operator under the Wholesale-Retail Code, nothing in the Scheme shall prevent or restrict the Affected Customer's right or ability to transfer its supply of retail services to another Licensee or relevant undertaker or to other terms and conditions offered by the Eligible Licensee at any time.

9. Provision of information to Affected Customers

9.1.1 Within five (5) Business Days of the date of the Market Operator sending a Report in accordance with the Wholesale Retail Code confirming that an Interim Duty Supply Point has been Registered to it as the result of the Authority's direction ~~under which an Interim Licensee is required to~~ provide Interim Supply to an Affected Customer, the Interim Licensee shall write to the Affected Customer in plain and intelligible language in order to provide at least the following information:

- (a) that the Interim Licensee is now the Affected Customer's provider of Water Retail Services and/or Sewerage Retail Services and that the Previous Licensee is no longer supplying the Affected Customer;
- (b) the reason why this is the case;
- (c) the date from which the Interim Licensee commenced the provision of Interim Supply to the Affected Customer which, unless the Authority advises to the contrary, shall be the Date of Relevant Cessation of Supply;
- (d) relevant contact details of the Interim Licensee;
- (e) that the Affected Customer has the right to switch to an alternative provider of Water Retail Services and/or Sewerage Retail Services at any time;
- (f) the steps the Interim Licensee shall take to resolve any outstanding service requests and/or complaints between the Affected Customer and the Previous Licensee;
- (g) a copy of the applicable Scheme, where relevant as modified by an Interim Supply Offer in accordance with Section 8.2 of this code, or an indication where the Scheme can be found on its website; and
- (h) a statement that alternative terms and conditions from the applicable Scheme may be available and how information about such alternative terms and conditions may be obtained.

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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