

Consultation on retail exit code: conclusions

About this document

The UK Government is committed to opening a retail market that will provide choice to eligible non-household customers in England from April 2017.

This document sets out our conclusions on our approach to the retail exit code. The retail exit code sets out the principles for the scheme of terms and conditions that will apply in certain circumstances where the customer is receiving a water supply and/or sewerage service, but no contract has otherwise been agreed between the retailer and the customer. These terms and conditions, once applied to the particular customer relationship created are often referred to as 'deemed contracts'.

In our February 2016 policy conclusions on the retail exit code we set out our policy conclusions on a number of issues, which we had consulted on in the October 2015 consultation. We also published the draft text of the Retail Exit Code. The Retail Exit Code is a statutory code, the requirements of which are set out in the Water Act 2014 and the retail exit regulations (Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (the Exit Regulations)). Defra is finalising the Exit Regulations, and hopes to lay the regulations in Parliament shortly. The Retail Exit Code set out with this document should therefore be viewed as near final and is subject to the finalisation of the retail exit regulations.

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

This document, the guide and the Retail Exit Code should be read in conjunction with the following related documents:

- the relevant provisions of the Water Act 2014 (WA14);
- the relevant provisions of Defra's draft Exit Regulations;
- Our October 2015 consultation: 'Customer protection for the non-household retail market: deemed contracts – a consultation'; and
- Our February 2016 consultation document: 'Deemed Contracts: policy conclusions and consultation on draft retail exit code.'

At the moment only a small number of non-household customers across England and Wales can choose their water retailer and most customers must use services provided by the monopoly water companies.

The Water Act 2014 will allow eligible business, charity and public sector organisation (non-household) customers 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 business, charity and public sector organisation customers. 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 to choose their supplier 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 [seven out of ten non-household 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 and the environment 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.

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1. Executive summary

The Water Act 2014 allows Defra to make regulations to provide for retail exit – that is, for an appointed water company to apply for permission to transfer all its business, charities and public sector customers to one or more retailers that hold a Water Supply and Sewerage Licence (WSSL). A water company could transfer its business, charity and public sector customers to an associated WSSL retailer (which is part of the same overall company), or an unrelated WSSL retailer. WSSL holders will be able to offer retail services across the whole non-household market.

Defra has published the draft Exit Regulations. Regulation 27 of the draft Exit Regulations requires all licensees providing or proposing to provide services in relation to a retail exit area (an area where retail exit has taken place) to make and keep under review a scheme setting out the terms and conditions that will apply in cases where a contract has not been negotiated with a customer. Regulation 28 places a requirement on Ofwat to issue a code setting out the basis for the schemes produced under regulation 27.

In October 2015, we consulted on the requirements for “deemed contracts” in relation to both retail exit and interim supply. The introduction of Schemes of Terms and Conditions upon which deemed contracts will be based, will make sure that business, charity and public sector customers who are affected by retail exit or by their licensed supplier ceasing to supply them have contractual terms and conditions after the retail market opens in April 2017.

In February 2016, we issued a consultation on a draft Retail Exit code. We received eleven responses to our consultation. Responses were broadly supportive of the approach that we had proposed. The responses to the code included both comments on the drafting and on policy. Section 3 of this document summarises the issues raised by respondents and explains our conclusions on these and Table 1 below summarises these decisions and the decisions in our February conclusions document. Alongside this document we have published the Retail Exit Code which reflects these policy decisions and, where appropriate stakeholder comments on drafting. We have also published a guide to the Retail Exit Code.

Table 1: Summary of conclusions and next steps

Issue	Proposed approach	Further information
Approach to setting price terms for customers who are transferred	Customers should be no worse off at the point of Exit. The acquiring WSSL retailer should offer the relevant retail tariff applicable to the customers at the point of transfer in its scheme of terms and conditions.	Section 3.1
Approach to setting price terms for other customers	<p>We continue to consider that small and medium-sized enterprise (SMEs) customers that have not been transferred should merit similar protection to customers who were transferred as part of the Exit process and that prices should be linked to the tariff that would have applied to them had the undertaker for that area decided not to exit. SMEs should be defined by employee numbers.</p> <p>For non-SMEs we have decided that the principle of no undue preference or no discrimination should apply.</p>	Section 3.1
Information Requirements	The wider work on customer protection is considering whether customers are provided with reminders that they are on a deemed contract and information on alternatives.	Section 3.2
Provision of information to customers on request	Rather than specify a ‘reasonable’ time period, we consider it appropriate that the retailer should respond to a customer request for information on alternative terms and conditions within 10 Business days.	Section 3.2
Termination Notice Period	We have concluded that it would be inappropriate for a retailer to have the right to terminate a customer’s contract on notice. We expect a retailer to only be able to terminate a contract in situations where there has been a material breach, non-payment, force majeure, insolvency etc. We may reconsider this at a later stage, if there is a sufficient pool of Suppliers of the First Resort in place. A Supplier of the First Resort is a supplier that must take on new customers who do not seek out and negotiate their own contracts.	Section 3.2
Customer Relocation	If a customer relocates within the geographic boundary of the relevant retailer, it should remain on the same deemed contract.	Section 3.2

Issue	Proposed approach	Further information
Disconnection	The provisions of schedule 4a WIA, which deal with premises that are not to be disconnected for non-payment of charges only applies to undertakers. We have included the reference schedule 4a WIA Retail Exit Code, as we consider it important that such provisions should also apply to licensees, so that customers have sufficient protection.	Section 3.2
Back-billing	We are continuing to consider back-billing as part of our wider customer protection work, and will make sure that deemed contracts align with any wider measures.	Section 3.2
Retail Exit Code governance	We do not consider that the Retail Exit Code needs to include any specific modification procedures. Once effective, any future modifications to the Retail Exit Code 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
Exclusion of the costs of promotional, marketing and advertising activities in the charges being levied under the deemed contracts.	We consider that it would be inappropriate to exclude the reasonable costs of marketing activities where they are efficiently incurred.	Section 3.1 February policy conclusions
Whether there should be a minimum term for customers on deemed contracts and whether a review point should be built into the arrangements	There can be no minimum fixed term, so that customers are able to move to a different contract or a different retailer at any time. We also consider that there should be no formal review point, as the wider work on customer protection is looking at how to alert customers that they are on deemed contracts.	Section 4.1 February policy conclusions
Whether a retailer should be allowed to impose termination fees for deemed contracts	Customers cannot be required to pay a termination fee when they switch to a different retailer or contract or if they terminate and do not switch. We have made this clearer in the legal drafting in the Retail Exit Code.	Section 4.3 February policy conclusions
Provision of information about affected customers	We consider that the retailer should inform the customer that they are on a deemed contract as soon as practicable, but no later than two months of the contract starting.	Section 4.5 February policy conclusions
Billing twice yearly	We consider that it would be inappropriate to mandate that customers should be billed twice yearly, as some customers may only be billed on an annual basis. The supplier should frequently remind the customer that they are on a deemed contract.	Section 4.6 February policy conclusions

Issue	Proposed approach	Further information
Price terms for customers that have not transferred	We consider that SME customers that appear in a retail area, e.g. are not transferred, merit a degree of price protection similar to customers who were transferred as part of the Exit process. We do not at this point intend to impose any special non-price terms for micro-businesses.	Section 4.8 February policy conclusions

1.1 Next Steps

Defra is yet to finalise the Exit Regulations. The Retail Exit Code should therefore be regarded as draft final until these regulations have been finalised. Once the Exit Regulations are finalised we will review the draft final Retail Exit Code to see whether any consequent amendments are required. The final Retail Exit Code will be issued in March 2017.

2. Our approach

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 customers to engage with the market arrangements and support the highest levels of rivalry; and
- supporting a seamless experience for eligible business, charity and public sector 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 conclusions set out in this document, 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 our proposals in relation to licensing, broader customer protection measures and charging rules, as well as the market codes.

Our proposals have also been informed both by our consultation on the Retail Exit Code and by previous stakeholder engagement on these matters during 2015 and 2016.

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 the 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.

3. Retail exit code: price terms

3.1 Price terms

Price terms are key to ensuring that customers on a deemed contract are treated fairly and are paying a reasonable price for their service. Customers on a deemed contract have not actively agreed to the terms, and although we expect many customers to then engage with the market and choose to move onto terms and conditions that are more preferable to them. A large proportion of business, charity and public sector customers might be on deemed contracts, at least initially, depending on how many appointed companies exit the market. We know from the experience in other sectors that some customers may not engage with the market quickly, and so could remain on the deemed contract for some time. Consequently it is important that the price terms after retail exit offer adequate protection to customers.

The following section sets out our conclusions for the price terms for both customers transferred during retail exit and customers after retail exit that are no longer with the original acquiring licensee.

3.1.1 Retail exit

Our proposed approach

In our February policy conclusions document, we stated that the price term for transferred customer was that the acquiring WSSL retailer should offer the relevant retail tariff applicable to the customers at the point of transfer in its scheme of terms and conditions. This was consistent with the principle of the Exit Regulations that customers would be no worse off as a result of exit. The charges would then be adjusted in the same way as they would have been if exit had not occurred. We stated that at the end of the non-household price control period (31 March 2020), we would review this price term to identify whether it still is relevant or needed to be adjusted. We also stated that we would not expect transferred customers who had already negotiated a contract, or were on a special agreement to require a scheme of terms and conditions.

Stakeholder responses

Respondents raised various issues about the application of the proposed price term.

One respondent agreed with the principle that customers should be charged no more than the tariff that they would have been charged by their (exited) undertaker, but considered that these price protections should not continue indefinitely as the market develops.

One respondent raised a concern that there could be a significant burden in calculating tariffs in line with the non-household control.

One respondent had a concern that the price term would limit the charges to those that would have been payable on the Exit Date by that Eligible Exit Area Customer as this could negatively impact some consumers. It was concerned that if customers were in receipt of discounts prior to exit and cost rose after exit then this could result in a margin squeeze. It was proposed instead that the price term should be redrafted to state that prices should not exceed the PR16 price determination.

Respondents asked for greater clarity on the Permitted Adjustment term. There was a concern that it could be interpreted in a way that that wholesale charges could not be passed through, even though that was not the intent. There was also a concern that it may suggest that Ofwat intends to adjust an exited retailer's prices if it considers the price to be inappropriate.

Our conclusions

We consider that there is sufficient information for companies to calculate charges consistent with the non-household price control. The non-household price control sets out the allowable revenue for undertakers for each year of the price control period. Integrated undertakers are also required to publish charging schemes annually and as part of PR14 to publish default tariffs. We therefore do not consider that the calculation of charges based on the price control should constitute a significant burden on acquiring licensees.

In relation to comments about the duration of price protections, we stated in our policy conclusions document that there should be no presumption that these price protections for customers at the point of transfer will continue indefinitely as we expect the market to develop over time. At the end of the next non-household price control period, we will review these price terms to identify whether they are still relevant or need to be adjusted.

We note stakeholder concerns that the price term could prevent price reductions. This was not our intention. Under the price control mechanism undertakers can make changes to charges, to rebalance charges between customers and to make adjustments to meet control limits. The price adjustment term has been amended to

make it clear that this flexibility also applies to an acquiring licensee. We consider that this approach is consistent with setting prices in line with the price control determination while protecting the charges for customers at the point of transfer.

3.1.2 Post exit

Our proposed approach

In our policy conclusions document, we concluded that SME customers that have not been transferred merit a degree of protection similar to customers who were transferred as part of the Exit process. In particular that prices for these customers should be no higher than the charge that would have applied to them had the undertaker for that area decided not to exit. For the period beyond 2017-18 these charges should be adjusted on an annual basis in the same way had exit not occurred. We stated that we would review these price terms to identify whether they were still needed or required adjustment at the end of the next non-household price control period.

For non-SMEs, we did not consider such price protection was necessary as larger customers were more likely to engage with the market. For such customers we therefore required prices to be:

- reasonable; and
- offer no undue preference or discrimination.

Stakeholder responses

One respondent commented that they did not consider that Ofwat has adequately demonstrated the need give greater protection to SMEs.

Some respondents considered that having separate price protection for SMEs would create an administrative burden for licensees, as they would need to identify SMEs among their customer base. Two respondents suggested using consumption data to identify SMEs and one suggested the use of Standard Industrial Classification (SIC) codes.

One respondent commented that while they agreed with our proposal for SME customers to benefit from the same price protection as transferred customers, such protection should not be indefinite as it would amount to setting a regulated tariff.

One respondent also sought clarification on how we intended to interpret 'no undue preference' and 'no undue discrimination' and another 'reasonable prices'.

Our conclusions

Our decision to require a greater degree of price protection for SMEs was based on the potential risks around how the non-household retail market might develop. To inform our decision, we considered the evidence from the energy market investigation (CMA 'Energy market investigation: Provisional Findings' July 2015). For SMEs, in the electricity and gas market the CMA found evidence that average prices were substantially above the levels that would be expected in a well-functioning competitive market¹. The CMA has recently published its provisional remedies for the energy market. As part of this, the CMA revised its analysis of detriment. Nevertheless the CMA continued to find that the six large energy firms had profits in excess of the cost of capital to SME customers of around £280 million per year between 2007 and 2014. While we acknowledge that the majority of the detriment found by the CMA is for microbusiness customers; given the uncertainty on how the market will develop we continue to consider that it would be appropriate to protect all SME customers rather than only microbusinesses. Our wider work on customer protection will give additional and enduring protection to micro businesses covering sales, marketing, contractual and switching issues and price transparency, reflecting the reduced resources available to these customers compared to SMEs.

In the draft retail exit code we proposed that SMEs should be defined based on the number of employees. We still consider it appropriate to use a definition based on employees. There is an incentive on customers to engage with the retailer and provide such information. We do not consider SIC codes would be a suitable measure, as they are generic and refer to sectors of the economy rather than reflecting the size of companies. We also do not consider that volume measures would be suitable, as this would not distinguish large companies with lots of small sites which would have the greater ability to engage with the market and individual small companies. Staff headcount should be used for defining an SME. This definition should be based on the European Commission definition².

As with the price term for transferred customers, we consider that there should be no assumption that the price term for SMEs should endure indefinitely. Consequently at

¹ Paragraph 14, Energy market investigation, summary of provisional decision on remedies.

² Recommendation 2003/361/EC, as published in the Official Journal of the European Union L 124, p. 36 of 20 May 2003. The Recommendation defines an SME in terms of staff headcount and turnover and only the staff headcount definition should be used.

the end of the next non-household price control period, we will review these price terms to identify whether they are still needed or require adjustment.

We do not consider that it is necessary for us to provide guidance on how companies should set reasonable prices or interpret 'no undue preference' and 'no undue discrimination'. There are precedents for how these terms have been used elsewhere, which may guide retailers in setting what constitutes reasonable prices or undue discrimination.

3.2 Non price terms – responses and conclusions

Deemed contracts are a form of backstop protection, so customers must be aware and informed of the terms on which they are receiving their water supply. Customers must be free to engage with the market and have choice to switch away from the deemed contract to a different contract or a different retailer. There should be no barrier to customers participating in the competitive market. The following sections sets out our conclusions on the non-price terms for deemed contracts, taking into account stakeholder responses. These terms would apply to all customers after retail exit. The following non-price terms are dealt with in turn:

- Notice period for termination;
- Information requirements;
- Provision of information to customers;
- Other issues: Disconnection and relocation;
- Backbilling;
- Retail Exit Code governance; and
- Drafting suggestions.

3.2.1 Notice period for termination

Our proposed approach

The customer should not be required to give any notice of their intention to switch to a different retailer. This would ensure the smooth functioning of a competitive market. In our consultations in October 2015 and February 2016 we proposed that the retailer should give at least 3 months' notice to terminate a customers' deemed contract to provide customers with adequate time to engage with the market. This would apply to transferred customers and customers that had not been transferred in an exit area.

Stakeholder responses

Two stakeholders mentioned that the drafting of the non-price terms for customers that had not been transferred in an exit area did not have a provision for a three month notice period, although there was one for transferred customers.

Our conclusions

In our consultation on the Retail Exit Code, we stated that retailers should be required to give 3 months' notice of termination, to provide customers with sufficient time to engage with the market before a contract was terminated. Having explored the issue further we have concerns that if a licensee is able to terminate, the customer, despite being incentivised to engage in the market, could be left without a supplier simply by being disengaged or unattractive for licensees to want to supply it. This would be a particular concern if there were no Supplier of the First Resort (SoFR) pool. We do not yet have visibility on the sustainability of the interim supply and SoFR pools of licensees. We have therefore concluded that we should omit this provision from the draft code at this stage. We may review this once further work has been done on the SoFR. If there is likely to be a sustainable pool of SoFR licensees then it may be more appropriate to allow termination on notice.

3.2.2 Information requirements

Our proposed approach

Where a retailer supplies water and/or sewerage services to a customer's premises under a deemed contract, it should frequently provide:

- reminders to the customer that they are on a deemed contract,
- information of other terms available to the customer that may be different from the terms of deemed contracts, and
- information on how the customer may opt for such contracts.

We also noted that while information could be provided to the customer via the billing process, it may not be appropriate to rely solely on this form of communication, as some customers may only be billed infrequently.

Stakeholder comments

One stakeholder considered that the form of communication should be left to the retailer and the communications should not be necessarily in writing.

Our conclusions

The provision of information is essential to the efficient working of the retail market. We do not consider that it is unreasonable or over burdensome for information to be provided at least in writing, which, in the context of the Retail Exit Code, includes email (see section 1.2(g)). The information may also be provided through other channels.

We therefore conclude that where a retailer supplies water and/or wastewater services to a customer's premises under a deemed contract, it should provide:

- notification to the customer that they are on a deemed contract,
- information of other terms available to the customer that may be different from the terms of deemed contracts, and
- information on how the customer may opt for such contracts

The wider work on customer protection is considering whether customers are provided with reminders that they are on a deemed contract and information on alternatives.

3.2.3 Provision of information to customers

In our February 2016 document we concluded that a customer's request to a licensee for alternative terms and conditions should be answered within a reasonable timeframe.

Stakeholder comments

One respondent suggested that Ofwat should clarify what it means by "reasonable". It argued that a customer's request to a licensee for alternative terms and conditions should take no more than ten business days to prompt a reply. Business days are defined in the Retail Exit Code. This is the same timeframe as appointed companies currently use to respond to written queries (i.e. in line with the Guaranteed Standards Scheme).

Our conclusions

To better to facilitate competition, we agree that it would be appropriate for a licensee to provide information to a customer on alternative terms and conditions in no more than ten business days. This timeframe should not create a burden on companies, as they should have processes in place to deal with other requests

within such a timeframe, such as those under the proposed Guaranteed Standards Scheme.

3.2.4 Other issues: Disconnection and relocation

The following broader issues with disconnection and relocation were raised.

Stakeholder comments

One respondent suggested that the reference to schedule 4a WIA was unnecessary as this was already dealt with under primary legislation.

One respondent asked what happens if the customer relocates.

Our conclusions

The provisions of schedule 4a WIA, which deal with premises that are not to be disconnected for non-payment of charges only applies to undertakers. We have included the reference schedule 4a WIA Retail Exit Code as we consider it important that such provisions should also apply to licensees so that customers have sufficient protection.

Where a customer relocates within the boundaries of the geographical area of the relevant wholesaler the customer should continue to be served under the scheme of terms and conditions that they are already on. This will ensure that the customer will continue to have the same price and non-price protection.

3.2.5 Back billing

Ofwat proposed approach

We considered the issue of back-billing in the non-household retail market in the wider work we are doing on customer protection. In our March 2016 consultation 'Customer Protection Code of Practice (CPCoP): Protecting customers in the non-household retail market – a consultation on final proposals and a draft customer protection code of practice', we have proposed that retailers be prohibited from back-billing beyond the previous financial year. We did not address the issue of back-billing in the Retail Exit Code.

Stakeholder comments

One stakeholder commented that the Retail Exit Code should not prevent exiting undertakers and acquiring retailers from pursuing outstanding debts and another respondent commented that back billing remained an area of concern where they felt further work was required.

Our conclusions

The Retail Exit Code sets out principles for the terms and conditions that are to apply in certain circumstances where the customer is receiving a water supply and/or sewerage service but no contract has otherwise been agreed between the retailer and the customer. The Retail Exit Code does not prevent exiting undertakers and acquiring WSSL retailers from pursuing outstanding debts.

3.2.6 Retail Exit Code governance

In our policy conclusions document we stated that once effective any future modifications to the Retail Exit Code will only be made following consultation in line with Ofwat's statutory functions and duties and the scope and powers set out in legislation.

Stakeholder comments

Two respondents would welcome provisions in the Retail Exit Code itself on code governance and would like some details on what the consultation process would entail. One respondent suggested that it would be useful for parties to the Retail Exit Code to understand how code changes would be implemented including the timeframe over which such changes would take effect.

Ofwat's conclusions

Under Draft Regulation 28 of the Exit Regulations, Ofwat is required to carry out periodic reviews of the Retail Exit Code and, if appropriate, issue a revised code. Similarly Ofwat will be required to carry out periodic reviews of the Interim Supply Code (ISC). However, unlike the Wholesale-Retail Code, where a governance process is specified under Schedule 2 WA14, S66DB, no process is set out for either the REC or the ISC.

As with the ISC, we do not consider that the Retail Exit Code needs to include any specific modification procedures. Once effective, any future modifications to the Retail Exit Code will only be made following consultation, in line with Ofwat's statutory functions and duties and the scope and powers set out in legislation.

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. Based on earlier Defra consultations we do not currently expect the Retail Exit Code to be subject to CMA appeal. Defra will be launching a consultation on the draft regulations relating to code appeals in summer 2016.

3.3 Retail Exit detailed drafting amendments

A number of respondents provided specific suggested Retail Exit Code 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 Retail Exit 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 Retail Exit Code as both a clean and a comparison version (with changes shown 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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Retail Exit Code

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

[~~Effective 1 April 2017~~ Effective (once Exit
Regulations come into force)]

Version ~~DRAFT 03022016~~ 112330032016

Change History

Version Number	Date of Issue	Reason For Change	Change Control Reference	Sections Affected
DRAFT 26012016	26 Jan 2016	First draft for legal review	N/A	N/A
Draft 03022016	3 Feb 2016	Second draft for legal review		
Draft 11032016	11 Mar 2016	Third draft for legal review		
Draft 23032016	2330 Mar 2016	Fourth draft for legal review		

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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 <u>the</u> Water Industry Act 1991
“2014 Act”	the Water Act 2014
“Acquiring Licensee”	is a Licensee which has a duty pursuant to the Exit Regulations to continue the supply of water or provision of sewerage services to any Transferred Customer on and after the Exit Date.
“Appointment”	the instrument of appointment granted to an a relevant undertaker under the 1991Act
“Area”	any area for which an Appointment is held
“Business Day”	the period of 08:00 to 18:00 hours on any day other than a Saturday or Sunday, or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971
“Cancellation Request”	as defined in the Wholesale Retail Code
“Charges Scheme”	a charges scheme produced by a relevant undertaker pursuant to s143 of the 1991 Act
“Disconnection Request”	a <u>A</u> s defined in the Wholesale Retail Code
“Eligible Exit Area Customers”	the owner or occupier of [Eligible?] <u>Eligible</u> Premises in a retail exit area
“Eligibility Guidance”	<p>i) any guidance issued by the Authority under paragraph 10(1) of schedule 2A or paragraph 4 of schedule 2B of the 1991 Act in relation to the factors that are, or are not, to be taken into account in determining the extent [eligibility] of any particular premises; and/or</p> <p>(ii) any regulations made by the Secretary of State <u>or the Welsh Ministers (as appropriate)</u> under section 17C(3) of the 1991 Act as to the circumstance or factors which relate to the use of any premises,</p>

Definitions	
Term	Definition
	(iii) together with any further guidance as to the identification or designation of a customer and/or premises which the Secretary of State <u>or the Welsh Ministers (as appropriate)</u> , the Authority or the Market Operator may issue from time to time
“Eligible Water Supply Licensee	as defined in the Exit Regulations
“Eligible Licensee”	an Eligible Water Supply Licensee or an Eligible Sewerage Licensee.
<u>“Eligible Premises”</u>	<u>as defined in Wholesale Retail Code.</u>
“Eligible Sewerage Licensee”	as defined in the Exit Regulations
“Exit Application”	as defined in Exit Regulations
“Exit Date”	as defined in the Exit Regulations
“Exit Regulations”	any regulations made under section 42 of the 2014 Act from time to time
<u>“Go Live Date”</u>	<u>The date determined by the Secretary of State as the date when the retail water and sewerage market for Eligible? Eligible Premises opens.</u>
“Licence”	a Water Supply Licence or a Sewerage Licence
“Licensee”	the holder of a Licence
“Market Operator”	as defined in the Wholesale Retail Code
“Permitted Adjustment”	the -adjustment that the relevant undertaker for the retail exit area in which the Transferred Customer's <u>Eligible</u> Premises are located would have been entitled or required to make to the part of the Charges Schemes applicable to the Transferred Customer and/or Eligible Exit Area Customer pursuant to the notice given by the Authority to the relevant undertaker on 16 December 2016 of a determination of price controls under that undertaker's Appointment, save that, instead of “wholesale revenue”, the Licensee shall include the relevant Wholesale Charges for the class of customer which would include the Transferred Customer and/or the Eligible Exit Area Customer. This <u>adjustment</u> would include the possibility to make of <u>making</u> adjustments to tariffs to rebalance charges between customers and to make adjustments to meet control limits, in each year to which the determination of

Definitions	
Term	Definition
	price controls applies, as would apply had the undertaken <u>undertaker</u> not exited.
“Premises”	as defined in Wholesale Retail Code.
“Scheme of Terms and Conditions	the scheme or schemes made by Licensees pursuant to Regulation [27] of the Exit Regulations
“Small and <u>M</u> medium-sized <u>E</u> enterprises (SME)”	an enterprise <u>an Eligible Exit Area Customer</u> with fewer than 250 employees.
“Transferred Customer”	the owner or occupier of <u>Eligible</u>] Premises which were transferred to the Acquiring Licensee on the Exit Date
“Wholesale Charges”	as defined in the Wholesale Retail Code
“Wholesale-Retail Code”	the code issued by the Authority under sections 66DA and 117F of the 1991 Act, as amended from time to time

1.2 Interpretation

1.1.1 In this Retail Exit Code:

- (a) References to ‘this code’ are to this Retail Exit Code;
- (b) References to 'Sections' are to sections of this Retail Exit Code unless otherwise expressly stated;
- (c) References to Licensees will refer to all Licensees, unless otherwise specified.
- (d) Words imparting a gender include every gender and references to the singular include the plural and vice versa;
- (e) Words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident and for whatever purpose) and vice versa;
- (f) Save as otherwise expressly provided references to time are to local time;

- (g) References to 'writing' or 'written' shall include email;
- (h) References to 'day' and 'calendar day' mean the same as one another;
- (i) References to the Retail Exit Code or any other document are to this Retail Exit Code or that document as in force for the time being and as amended, supplemented, varied, modified, renewed, replaced or extended from time to time in accordance with the requirements of this Retail Exit Code or that document (as the case may be);
- (j) A reference to any body is:
 - (i) if that body (statutory or otherwise) is replaced by another organisation, deemed to refer to that replacement organisation; and
 - (ii) if that body (statutory or otherwise) ceases to exist, deemed to refer to that organisation which most substantially serves the same purposes as the original body;
- (k) A reference to a statute or statutory provision shall, unless otherwise stated, be construed as including:
 - (i) a reference to any orders, regulations and subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made from time to time under the statute or statutory provision whether before or after the effective date; and
 - (ii) a reference to that statute, statutory provision or subordinate legislation as in force at the effective date and as from time to time modified or consolidated, superseded, re-enacted or replaced (whether with or without modification) after the effective date;
- (l) References to a person shall, except where the context requires otherwise, include its successors in title and permitted assignees;

- (m) A reference to a particular condition of a Licence shall be construed at any particular time as including a reference to any modification of that condition in force at that time; and
- (n) Any words or expressions used in the Water Industry Act 1991 or the Water Act 2014 shall, unless the contrary intention appears, have the same meaning when used in the Retail Exit Code.
- (o) The headings and contents table in the Retail Exit Code are for convenience only and do not affect its interpretation.
- (p) In the Retail Exit Code, the words 'other', 'includes', 'including' and 'for example' do not limit the generality of any preceding words, and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.
- (q) In the Retail Exit Code, the words 'for the time being' mean at the relevant time now or in the future unless the context requires otherwise.

2. Introduction

2.1 Purpose of this code

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

2.2 Scope of this code

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

2.3 Types of Schemes of Terms and Conditions

- 2.3.1 An Acquiring Licensee shall ensure that it makes and from time to time revises a Scheme of Terms and Conditions which complies with the principles set out in Section 3 as well as Schemes of Terms and Conditions which comply with Sections 4 and 5.

2.3.2 All Licensees who are providing or proposing to provide services to Eligible Exit Area Customers who are Small and Medium-sized Enterprises (SMEs) under their Licence(s) shall ensure that they make and from time to time revise Schemes of Terms and Conditions which comply with the principles set out in Section 4.

~~2.3.2~~2.3.3 All Licensees who are providing or proposing to provide services to Eligible Exit Area Customers other than SMEs under their Licence(s) shall ensure that they make and from time to time revise Schemes of Terms and Conditions which comply with the principles set out in Section 5.

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

3.1 Price requirements

3.1.1 Subject to section 3.1.2, in making the price terms to be included within a Scheme of Terms and Conditions for Transferred Customers, the Acquiring Licensee must ensure that the charges payable by the Transferred Customer do not exceed the charges that would have been payable on the Exit Date by that Transferred Customer had they been able to remain with the relevant undertaker.

3.1.2 The Acquiring Licensee shall adjust the maximum charges payable by Transferred Customers on 1 April each year by the Permitted Adjustment.

~~3.1.2~~3.1.3 The Authority will review the price requirements in sections 3.1.1 and 3.1.2 at the end of the first review of price limits -for non-household customers for relevant undertakers after the Go Live Date to determine whether those requirements are necessary or require adjustment.

3.2 Non Price requirements

In making the non-price terms to be included in a Scheme of Terms and Conditions for Transferred Customers, the Acquiring Licensee must comply with the following principles:

3.2.1 the Scheme must be consistent with Acquiring Licensee's obligations under its Licence and applicable law.

3.2.2 A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if the Transferred Customer's Eligible Premises are not of a type specified in Schedule 4A of the 1991 Act and:

- (a) the Transferred Customer is liable to pay charges to the [Acquiring Licensee or] relevant undertaker and has failed to do so before the end of a period of seven days beginning on the day after he is

served with notice requiring him to do so [and the Acquiring Licensee has made a Disconnection Request]; or

(b) the Transferred Customer has consented to or has requested the discontinuance. ~~;~~ ~~or~~

3.2.3 alternative drafting for 3.2.2 if relevant parts of Schedule 7 are commenced

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

(a) The Acquiring Licensee would be entitled to make a request pursuant to section 61(1ZB) of the 1991 Act; or

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

~~3.2.3~~

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

3.2.6 Where a Transferred Customer relocates within the same ~~Are a geographical area of the relevant wholesaler,~~ the Acquiring Licensee should continue to offer the ~~existing same s~~ Scheme of Terms and eConditions.

~~4.0.0~~

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

5.14.1 Price requirements

5.1.14.1.1 In making the price terms for a Scheme of Terms and Conditions which applies to Eligible Exit Area Customers who are SMEs but who are not eligible to be supplied pursuant to the Scheme of Terms and Conditions for Transferred Customers, a Licensee shall ensure that the charges payable by the Eligible Exit Area Customer do not exceed the charges that would have been payable on the Exit Date by that Eligible Exit Area Customer had they been supplied by the relevant undertaker pursuant to its Charges Scheme as those charges would have been adjusted each year following the Exit Date by the Permitted Adjustment.

5.1.24.1.2 The Authority will review the price requirements in section 4.1.1 at the end of the first review of price limits for non-household customers for relevant undertakers after the Go Live Date to determine whether those requirements are necessary or require adjustment.

5.24.2 Non Price requirements

In making the non-price terms for a Scheme of Terms and Conditions which applies to Eligible Exit Area Customers who are SMEs but who are not eligible to be supplied pursuant to the Scheme of Terms and Conditions for Transferred Customers, a Licensee shall comply with the following principles

5.2.14.2.1 the Scheme of Terms and Conditions must be consistent with the Licensee's obligations under its Licence and applicable law.

5.2.24.2.2 A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if the Eligible Exit Area Customer's ~~Eligible?~~ **Eligible** Premises are not of a type specified in Schedule 4A of the 1991 Act and:

- (a) the Eligible Exit Area Customer is liable to pay charges to the ~~Acquiring~~ Licensee or relevant undertaker and has failed to do so before the end of a period of seven days beginning on the day after he is served with notice requiring him to do so and the Licensee has made a Disconnection Request;
- (b) the Eligible Exit Area Customer has consented to or requested the discontinuance; ~~or~~

~~the Authority has consented to the discontinuance.;~~

~~4.2.3 the Licensee has given not less than 3 months' notice to the Eligible Exit Area Exit Customer. alternative drafting for 3.2.2 if relevant parts of Schedule 7 are commenced~~

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

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

~~(-)~~

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

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

6.0.0 —

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

7.15.1 Price requirements

~~4.1.1~~ In making the price terms for a Scheme of Terms and Conditions which applies to Eligible Exit Area Customers who are neither SMEs nor eligible to be supplied pursuant to the Scheme of Terms and Conditions for Transferred Customers, a Licensee shall ensure that:

~~7.1.1~~5.1.1 the charges payable by the Eligible Exit Area Customer are reasonable; and

~~7.1.2~~5.1.2 there is no undue preference shown to and that there is no undue discrimination against any Eligible Exit Area Customer compared with the Licensee's other Non-Household Customers of the same class as the Eligible Exit Area Customer

7.25.2 Non Price requirements

In making the non-price terms for a Scheme of Terms and Conditions which applies to Eligible Exit Area Customers ~~but~~ who are neither SMEs nor ~~not~~ eligible to be supplied pursuant to the Scheme of Terms and Conditions for Transferred Customers, a Licensee shall comply with the following principles:

~~7.2.1~~5.2.1 the Scheme of Terms and Conditions must be consistent with the Licensee's obligations under its Licence and applicable law.

~~7.2.2~~5.2.2 A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if the Eligible Exit Area Customer's ~~Eligible?~~ Eligible Premises are not of a type specified in Schedule 4A of the 1991 Act and:

- (a) the Eligible Exit Area Customer is liable to pay charges to the Acquiring Licensee or relevant undertaker and has failed to do so before the end of a period of seven days beginning on the day after he is served with notice requiring him to do so and the Licensee has made a Disconnection Request;

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

~~the Authority has consented to the discontinuance. ; or~~

~~5.2.3 the Licensee has given not less than 3 months' notice to the Eligible Exit Area Customer. A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if~~

- ~~(a) The Eligible Licensee would be entitled to make a request pursuant to section 61(1ZB) of the 1991 Act; or~~

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

~~(c)~~

~~5.2.4 Other than the right of a Licensee to submit a Cancellation Request to the Market Operator under the Wholesale Retail Code, nothing in the Scheme of Terms and Conditions shall prevent or restrict the Eligible Exit Area Customer's -right or ability to transfer -the supply of its retail service to another Licensee or to other terms and conditions offered by the Licensee at any time. In particular, there shall be no charge or fee payable by the Eligible Exit Area Customer upon termination of the Scheme of Terms and Conditions.~~

~~5.2.5 Where an Eligible Exit Area Customer relocates within the same Area the Licensee should continue to offer the same Scheme of Terms and Conditions.~~

~~8.0.0~~

9.6. Provision of information to Customers

~~9.1.4~~**6.1.1** Within two months of the date from which the Licensee commences supply to the Eligible Exit Area Customer, the Licensee shall write to the Eligible Exit Area Customer providing the following information:

- (a) a copy of the applicable Scheme of Terms and Conditions;
- (b) the date from which the Licensee commenced the provision of supplies to the Eligible Exit Area Customer;
- (c) that the Eligible Exit Area Customer has the right to switch to another provider of water and/or sewerage services at any time; **and**
- (d) that alternative terms and conditions from the applicable Scheme of Terms and Conditions may be available and how information about such alternative terms and conditions may be obtained.

6.1.2 If an Eligible Exit Area Customer requests a copy of the alternative terms and conditions that the Licensee has available, the Licensee shall provide these within 10 Business Days after receiving the request.

6.1.3 If a Transferred Customer requests a copy of the alternative terms and conditions that the Acquiring Licensee has available, the Acquiring Licensee shall provide these within 10 Business Days after receiving the request.

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

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