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Trust in water

Direction to Supply: guidance

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1. Introduction

1.1 Purpose of this guidance

This Guidance sets out the arrangements for ensuring that eligible customers in a Retail Exit Area can secure a retail supplier following the exit of an Undertaker from the business, charity and public sector retail market. These arrangements are referred to as the 'Direction to Supply arrangements' and will only apply to business, charity and public sector customers. This Guidance reflects the [outcome of our consultation](#) on the arrangements in August 2016, which are set out in an accompanying decision document.

This Guidance is required by the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (the "Exit Regulations"). Words and expressions defined in the Exit Regulations shall have the same meaning when used in this Guidance. The Glossary to this Guidance also sets out the meanings of some capitalised terms used in this Guidance. This Guidance is relevant to Undertakers; the Market Operator and new entrants to the retail market.

1.2 Context

The Water Act 2014 (WA14) contains provisions that enable the UK Government to introduce regulations to allow Undertakers, wholly or mainly in England, to withdraw from the non-household retail market with the consent of the Secretary of State for Environment, Food and Rural Affairs. The Exit Regulations were laid in Parliament in June 2016 and came into force on 1 October 2016. A number of these regulations relate to a Direction to Supply.

Regulations 36-42 (inclusive) and 51-57 (inclusive) of the Exit Regulations, set out the processes to be followed if exited Undertakers receive requests for retail services from owners or occupiers of Eligible Premises (i.e. premises that are other than household premises). We expect that these requests would be received in relation to what are known as "gap sites" i.e. new premises; newly Eligible Premises; or premises which have not otherwise been registered.

The Exit Regulations state that the licensee directed to serve the new customer must do so on their scheme(s) of terms and conditions unless the customer has negotiated a contract.

Regulations 31-35 (inclusive) and 46-50 (inclusive) of the Exit Regulations allow transferred customers (i.e. those eligible customers which have been transferred

from an Undertaker to an Acquiring Licensee as part of a retail exit) who have switched away from default contracts known as the schemes of terms and conditions (either as a result of switching supplier or negotiating new terms with an acquiring licensee) to apply to Ofwat to be allocated to a licensee and placed on that licensee's scheme of terms and conditions (or other terms and conditions agreed with that licensee). Ofwat is required to direct a licensee to supply the customer from the List (this in the past has been referred to as the SoFR Pool).

Regulations 42 and 57 of the Exit Regulations require Ofwat to maintain a List of eligible water supply and sewerage licensees for each Retail Exit Area. The Acquiring Licensees for that area must be included in the List unless they are a self-supply licensee or Ofwat has decided not to include them.

1.3 Scope

This guidance covers the following:

- Chapter 2 addresses the question of how holders of water supply and/or sewerage licences (“WSSL licensees”) other than Acquiring Licensees can participate in the Direction to Supply arrangements by becoming part of a List of licensees eligible for this;
- Chapter 3 addresses the question of how WSSL licensees, including Acquiring Licensees, can be removed from the List and how Acquiring Licensees can request to be excluded from the List; and
- Chapter 4 addresses the approach to allocating licensees to customers.

2. Inclusion in the List

2.1 Direction to Supply: notification for inclusion on the List

To be included in a List of Retailers that are entitled to supply customers, a Retailer must notify the Authority (i.e. Ofwat) that it wishes to be included on the List. It can be included on the List in relation to either or both Water Retail Services and Sewerage Retail Services and for particular geographic Retail Exit Areas. A template for this notification is contained in Appendix 1. The Retailer must also notify the Market Operator on the same Business Day as they apply to the Authority. The appropriate form of notification to the Market Operator will be set out in the Wholesale Retail Code. On receipt of a relevant notification, the Market Operator shall send a confirmation of receipt to the Retailer and shall add the Retailer to the List for each relevant Retail Exit Area for the purposes of the Direction to Supply Allocation.

3. Removal from the List

3.1 Removal at the request of the Retailer

Where a Retailer included on the List for the purposes of the Direction to Supply Allocation, other than an Acquiring Licensee, wishes to be removed from the List, it must notify Ofwat and the Market Operator on the same Business Day that it no longer desires to be included on the list in relation to either or both Water Retail Services and Sewerage Retail Services.

As soon as reasonably practicable following receipt of a relevant notification, the Market Operator shall send a confirmation to the Retailer that it has been removed from the List. A template for the notification to be completed by a Retailer is contained in Appendix 2.

3.2 Removal at request of an Acquiring Licensee / Exclusion at request of an Acquiring licensee

Where an appointed company has exited the retail market, the Exit Regulations require all Acquiring licensees to join the List unless they are a Self-supply Licensee or the Authority is satisfied, based on the proposed strategy of an Acquiring Licensee, that it would be not be appropriate for that licensee to be included on the List.

An Acquiring Licensee that wishes the Authority to consider its removal from the List shall complete the form of notification in Appendix 2. An Acquiring Licensee who wishes the Authority to consider its exclusion from the List, shall complete the form of notification in Appendix 3. In both cases, the Acquiring Licensee shall provide additional supporting evidence to satisfy the Authority that it would not be appropriate for it to be included in the List. Such supporting evidence could include:

- a) proof that the licensee's customers all fall within a narrow class of customers;
- b) proof that the licensee's customers all fall within a defined geographical area;
- c) proof that the licensee's systems have changed such that it is no longer capable of supplying customers other than a narrow class of customer; and
- d) evidence to show that customers would not be disadvantaged by the Retailer's removal / exclusion from the List.

In assessing any request by an Acquiring Licensee for removal, the Authority would take into account the following criteria, based on the supporting information:

- a) being satisfied that the Retailer is no longer capable of serving customers other than a narrow class, or a more defined geographical area;
- b) being satisfied that customers will not suffer, which will include an assessment of the resilience of the relevant List; and
- c) confirmation from the Market Operator that the evidence about the Retailer's customer base and systems capability is correct.

3.3 Temporary removal for non-performance

The Market Operator may temporarily remove a Retailer from the Direction to Supply Allocation process if less than eighty percent of the Supply Points allocated to any Retailer by way of the Direction to Supply Allocation in that period have not been made tradable (i.e. the point where a New Supply point may transferred and charged for). This is set out in the Wholesale Retail Code (CSD 0101 (Registration: New Supply Points)). The Retailer would not be allocated any Supply Points until such time as this restriction is lifted by the Market Operator.

3.4 Removal due to Insolvency

In the event of insolvency, where the Market Operator is notified that the Contracting Wholesaler has informed the Retailer that it may not submit any more transfer registration applications in respect of any Supply Points in the Contracting Wholesaler's area, the Market Operator must remove the Retailer from the List. The Retailer can only be allocated Supply Points, when the Wholesaler advises the Market Operator that the restriction placed on the relevant Retailer is no longer in effect.

4. Allocation

4.1 List of Retailers by Area - maintenance

The Market Operator shall maintain the List of Retailers by Area according to the following principles:

(a) Where a Retailer is removed or temporarily suspended from a List within a single Retail Exit Area for the relevant Year, the relative positioning of the remaining Retailers shall be unaffected; and

(b) Where a Retailer is added to a List then that Retailer shall be placed into the existing List in a randomly allotted position.

4.2 Allocation

On receipt of a request from either an Undertaker, or a customer; the Market Operator shall allocate each Direction to Supply 'Supply Point' on a sequential basis using the relevant List of Retailers. However, this is subject to the proviso that where a supply point at the Eligible premises is serviced by a water Retailer and an associated sewerage Retailer, it should, so far as practical, be allocated to that Retailer. This should be done as soon as practicable.

The Market Operator will inform the Authority of the outcome of the Allocation. The Authority will confirm whether or not it is happy to direct a Retailer on the basis of that outcome and will put in place administrative arrangements with the Market Operator to ensure that this process operates efficiently and that the allocated Retailer is notified of the relevant Direction to Supply as soon as reasonably practicable

The Retailer will then notify the customer, not later than 5 Business Days after the date of the Direction to Supply.

5. Terms and Conditions of Supply

Under the Exit Regulations, customers allocated to a Retailer under a Direction to Supply, will be placed on Schemes of Terms and Conditions unless they agree alternative terms with their new Retailer. The Retail Exit Code already sets out the principles upon which the price and non-price elements for the Schemes of Terms and Conditions will be developed by Retailers. Different price terms will apply to small and medium-sized enterprises (SMEs) and non-SMEs (as those terms are defined in the Retail Exit Code). The relevant sections of the Retail Exit Code are: Section 4 'Provisions about Schemes of Terms and Conditions for Eligible Exit Area Customers who are SMEs' and Section 5 'Provisions about Schemes of Terms and Conditions for Eligible Exit Area Customers who are not SMEs'. When the Retailer notifies the new customer that it has been appointed to provide Retail Services to that customer, it must inform the relevant customer that they have been placed on a Scheme of Terms and Conditions; that the customer has a right to switch to another provider of water and/or sewerage services at any time; 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.

Glossary

Acquiring Licensee: an eligible licensee that has been specified (and which has agreed in writing to be specified) as the Retailer to which the relevant Undertaker proposes to transfer a part of its undertaking upon exiting from the non-household retail market.

Allocation: the process by which the Market Operator shall allocate new Supply Points or existing Supply Points to a Retailer in accordance with Section 4 of this Guidance.

Appointed company: See “Undertaker”.

Authority: the Water Services Regulation Authority, also known as Ofwat, established by section 1A of the Water Industry Act 1991.

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.

Competitive Market: the market in the provision of Retail Services.

Contracting Retailer: for the purposes of the Wholesale-Retail Code, the Retailer that is party to the Wholesale Contract.

Contracting Wholesaler: for the purposes of the Wholesale-Retail Code, the Wholesaler that is a party to the Wholesale Contract.

Direction to Supply: Direction by Ofwat under regulation 41(1) and/or 56(1) of the Exit Regulations to assign a Retailer to Eligible Premises in a Retail Exit Area where the customer has not chosen an alternative licensee themselves.

Eligibility Guidance:

i) any guidance issued by the Authority under paragraph 10(1) of schedule 2A or paragraph 4 of schedule 2B of the Water Industry Act 1991 in relation to the factors that are, or are not, to be taken into account in determining the extent of any particular premises; and/or

(ii) any regulations made by the Secretary of State or the Welsh Ministers (as appropriate) under section 17C(3) of the Water Industry Act 1991 as to the circumstance or factors which relate to the use of any premises; and/or

(iii) together with any further guidance as to the identification or designation of a customer and/or premises which the Secretary of State or the Welsh Ministers (as appropriate), the Authority or the Market Operator may issue from time to time.

Eligible Exit Area Customer: the owner or occupier of Eligible Premises in a Retail Exit Area.

Eligible Premises: premises other than Household Premises and which may be identified as eligible premises in light of any Eligibility Guidance.

Exit Regulations: the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

Gap Site: any Eligible Premises which are in receipt of Water Retail Services and/or Sewerage Retail Services where no Supply Points or insufficient Supply Points are registered in relation to such Eligible Premises in the Supply Point Register.

Household Premises: premises in any part of which, a person has his home and whose principal use is a home and which may be identified as such in light of any Eligibility Guidance.

Market Operator: the company established to exercise certain central market functions in relation to the participation of Trading Parties in the Competitive Market;

Ofwat: the “Authority”.

Opt In Application Form: the form completed by a Retailer to opt in to be a member of the Supplier of First Resort (SoFR) Pool. A *pro forma* is contained in Appendix 1 of this Guidance.

Removal Application form: the form completed by a Retailer requesting removal from the Supplier of the First Resort (SoFR) pool. A *pro forma* is contained in Appendix 2 of this Guidance.

Retail Exit Area: an area in respect of which an exit application from an Undertaker has been granted.

Retail Exit Code: The code issued by the Authority pursuant to Regulation 30 of the Exit Regulations. 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.

Retailer: a Water Retailer and/or Sewerage Retailer as the context requires.

Retail Services: Water Retail Services and/or Sewerage Retail Services as the context requires.

Schemes of Terms and Conditions: a scheme made by a Retailer containing the terms and conditions which, in the absence of agreed terms and conditions, are to apply to services which that Retailer is providing or proposing to provide under its licence in relation to a Retail Exit Area. The principles that apply to the Schemes of Terms and Conditions are set out in the Retail Exit Code.

Self-supply Licensee: A Retailer that is authorised to provide retail services only to its own premises and/or those of its associates (for example, subsidiaries or partners) using the supply or sewerage systems of Appointed Companies whose areas of appointment are wholly or mainly in England.

Sewerage Licence: a licence granted under section 17BA of the Water Industry Act 1991 giving only a retail authorisation or a retail authorisation and a wholesale authorisation, or a retail authorisation, wholesale authorisation and a disposal authorisation.

Sewerage Retailer: the holder of a Sewerage Licence.

Sewerage Retail Services: those services provided by a Retailer under, or incidental to, the retail authorisation contained in its Sewerage Licence.

List: the lists of Suppliers eligible to be allocated under the Direction to Supply arrangements. Separate Lists will exist for each Retail Exit Area and for each service category.

Supply Point: in relation to any Eligible Premises, the point at which Water Retail Services or Sewerage Retail Services are provided and (to avoid doubt) there is a separate Supply Point for each of Water Retail Services and Sewerage Retail Services where the same Eligible Premises receives both services.

Trading Party: the Contracting Retailer and the Contracting Wholesaler and any other Retailer and/or Wholesaler that has satisfied the Trading Conditions.

Undertaker: a company appointed under section 6 of the Water Industry Act 1991 that has statutory powers and duties to supply water and/or sewerage services to premises within an appointed geographical area. It is also responsible for maintaining and operating the public water supply and/or sewerage systems.

Water Retailer: the holder of a Water Supply Licence.

Water Retail Services means those services provided by a Retailer under, or incidental to the retail authorisation contained in its Water Supply Licence

Water Supply Licence: a licence granted under section 17A of the Water Industry Act 1991 giving one or more of the following authorisations and combinations of authorisations:

- (i) a retail authorisation;
- (ii) a wholesale authorisation; or
- (iii) a retail authorisation and a wholesale authorisation;
- (iv) a restricted retail authorisation; or
- (v) a restricted retail authorisation and a supplementary authorisation.

WA14: Water Act 2014.

Wholesale Contract: an Undertaker.

Wholesale Contract: the contract between the Contracting Wholesaler and the Contracting Retailer that constitutes:

- (i) a Section 66D Agreement; or
- (ii) a Section 117E Agreement; or
- (iii) both a Section 66D Agreement and a Section 117E Agreement;

and which, in each case, refers to and incorporates the terms and conditions set out in the Wholesale-Retail Code.

Wholesale-Retail Code: the code of that name issued by the Authority under sections 66DA and 117F of the Water Industry Act 1991 including, without limitation, the Business Terms, the Operational Terms and the Market Terms and any Approved Change from time to time.

WIA91: Water Industry Act 1991

WSSL: a Licence granted by the Authority under section 17A and/or section 17BA of the WIA91.

Year: a period running from 1 April to 31 March inclusive.

Appendix 1: Application for Opt In - *pro-forma*

The purpose of this document is for a Retailer to inform the Authority that it consents to be directed to supply premises by the Authority under regulations 41 and 56 of the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016, and consents to be included on the List of Opted In Retailers by Area maintained by the Authority for that purpose.

If you are an Acquiring licensee please tick the following:

- The Acquiring licensee understands that the Regulations require it to be in the List for the Retail Exit Area, except where the Acquiring licensee applies be excluded from the List.

Please provide the following details for the applicant:

Applicant name:
Regulated owners:
Registered company number (if applicable):

Please specify whether you wish to be included on the List in relation to Water Retail Services or Sewerage Retail Services (you may select both boxes):

- Water Retail Services
- Sewerage Retail Services

Please specify whether you wish to be included on the List for all Retail Exit Areas, or for particular Retail Exit Areas.

All Retail Exit Areas

Only the following Retail Exit Areas (please specify in the box below):

Please specify if you have a contract with the wholesaler for each particular Retail Exit Area

(Please specify in the box below):

Appendix 2: Removal from List - *pro-forma*

The purpose of this document is for the Retailer to inform the Authority that the Retailer no longer consents to be directed to supply premises by the Authority under regulations 41 and 56 of the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016, and wishes to be removed from the List of opted in Retailers by Area maintained by the Authority for that purpose.

Please provide the following details for the applicant:

Applicant name:

Regulated owners:

Registered company number (if applicable):

Please specify whether you wish to be removed from the List in relation to all services or only Water Retail Services or Sewerage Retail Services:

All services

Only the following services (please specify in the box below):

Please specify whether you wish to be removed from the List for all Retail Exit Areas, or for particular Retail Exit Areas.

All Retail Exit Areas

Only the following Retail Exit Areas (please specify in the box below):

Please specify why you are requesting removal from the List:

The Licensee is not an Acquiring licensee and no longer wishes to opt in to the List.

If an Acquiring Licensee, please specify why you are requesting removal from the List:

The Acquiring licensee's customers all fall within a narrow class of customers (please attach proof with your request).

The Acquiring Licensee's customers all fall within defined geographical area (please attach proof with your request).

The Acquiring Licensee's systems have changed such that it is no longer capable of supplying customers other than a narrow class of customer (please attach proof with your request).

Customers would not be disadvantaged by the Retailer's removal from the List (please attach proof with your request).

Appendix 3: Request for non-inclusion on List by Acquiring Licensee - *pro-forma*

The purpose of this document is for the Acquiring licensee to request that it be excluded from the Direction to Supply arrangements by the Authority under regulations 41 and 56 of the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016.

Please provide the following details for the applicant:

Applicant name:
Regulated owners:
Registered company number (if applicable):

Please specify whether you wish to be removed from the List in relation to all services or only Water Retail Services or Sewerage Retail Services:

- All services
- Only the following services (please specify in the box below):

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Please specify whether you wish to be removed from the List for all Retail Exit Areas, or for particular Retail Exit Areas.

All Retail Exit Areas

Only the following Retail Exit Areas (please specify in the box below):

Please specify why you are requesting exclusion from the List:

The Acquiring Licensee's customers all fall within a narrow class of customers (please attach proof with your request).

The Acquiring Licensee's customers all fall within defined geographical area (please attach proof with your request).

The Acquiring Licensee's systems are only capable of supplying customers from a narrow class of customer (please attach proof with your request).

Customers would not be disadvantaged by the Retailer's exclusion from the List (please attach proof with your request).