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Trust in water

# Modifications to the Retail Exit Code – decisions following consultation

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## About this document

This document sets out our decisions in respect of the proposed modifications to the Retail Exit Code ('the REC') following our consultation, '[Modifications to the Retail Exit Code - a consultation](#)'. The consultation included proposed amendments to remove a regulatory obstacle so as to enable bulk transfers of customers between Water Supply and / or Sewerage Supply licensees in certain circumstances. It also separately included a proposal to change the definition of Permitted Adjustment, which in its current form, may be considered ambiguous.

This document also summarises the responses we received to our consultation and sets out our responses to the issues raised by respondents to that consultation, which we have taken into account in reaching our final decision.

Alongside this document we have published an updated version of the REC on our website.

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## 1. Introduction

Mergers and sales of a company's customer book are a normal feature of a well-functioning competitive market. This is usually possible because under the law of contract a party's rights can be assigned to another party unless the contract provides otherwise. However, a party's obligations under an agreement cannot be transferred without the consent of the other party (in this case the customer).

In commercial transactions involving the transfer of a large volume of customers, the need for consent raises obvious practical difficulties. Particularly in regulated sectors, this difficulty is often addressed via statutory transfer schemes. Where there is no provision made for statutory transfer schemes, commercial practices have developed whereby consent is deemed to have been given if the customer is fully informed of the proposed transfer and is given the opportunity to object. In the context of the business retail market, statutory transfer schemes only apply to transfers between appointed water or sewerage undertakers ('appointed companies'), and between appointed companies and licensees, when the appointed company is exiting the retail market and transferring its customers to an acquiring licensee. There is no provision for a statutory scheme between licensees except in the context of special administration.

The transfer of customers between licensees is currently a live issue in the market as there is an assumption that such a transfer is, or should be, possible in order for the competitive market to operate effectively. We agree with this, and consider this to be in line with our objectives for a dynamic market where entry, exit and expansion is prevalent. Following consultation, we are making modifications to the REC to facilitate such transfers by removing any unnecessary restrictions that are in place which prevent a bulk transfer of customers between licensees.

Another feature of a well-functioning market is that customers are sufficiently protected. The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (the '[Exit Regulations](#)') require licensees that are providing services to customers in areas where the appointed company has exited the business retail market (a 'retail exit area') to publish and keep under review a scheme of terms and conditions that sets out the terms and conditions that will apply in all cases where Retail Exit has occurred and affected customers have not otherwise negotiated a contract. The REC was issued by Ofwat, under the Exit Regulations, and it prescribes what must be in licensees' schemes of terms and conditions.

Currently, a "no worse off" restriction applies to acquiring licensees' price term provisions under the REC, but this only applies until March 2018. For 2018-19 and 2019-20, the REC requires the maximum charge payable by transferred customers to be adjusted on 1 April each year by the "Permitted Adjustment" (as defined in the REC).

One interpretation is that the definition of “Permitted Adjustment” prevents acquiring licensees from increasing their prices in line with annual increases of wholesale charges they incur. The “Permitted Adjustment” original definition only allows licensees to make the adjustments that the exited companies would have been allowed to make under the PR16 final determinations, which relate only to the retail activities of those companies and which only form a small part of the bills paid by end-user customers.

The price controls for wholesale activities that apply to the same period (2017-20), and which form the largest part of the bills paid by end-user customers, were set in our PR14 final determinations. Following consultation, we have decided that amendments to the REC need to be made to allow licensees to adjust their charges in line with adjustments in relevant retail and wholesale charges.

## 2. Our proposals

This section sets out the changes we proposed to make to the REC in our consultation (['Modifications to the Retail Exit Code - a consultation'](#)). We proposed changes to address two separate issues. These are:

- To remove a regulatory obstacle to the bulk transfers of customers between licensees. In particular, we propose amending the existing provisions in the REC that require, in all instances, individual customer consent before a licensee can terminate its supply. The amendment proposes to allow a licensee to include in its scheme of terms and conditions a provision allowing it to terminate its supply in a limited set of circumstances; and
- To allow retailers the ability to adjust their charges in line with changes to appointed companies' wholesale charges.

Our decisions following the consultation period are detailed within section 4 of this document. Having taken into account the comments and issues received in consultation responses, we have made a few minor changes to make the drafting of the amendments clearer. Our modifications to the REC can be viewed in Appendix 1 (with changes from the consultation version highlighted in yellow).

### 2.1 Consent before discontinuing a supply

Having reviewed the REC, we consider that the requirement it imposes for the individual customer to consent before an acquiring licensee can be relieved of its duty under regulation 26 of the Exit Regulations to supply or serve, acts as a barrier to a bulk transfer of customers. We also think that it goes further than is required by regulation 26. We therefore consider that including a limited set of circumstances that can be included in a scheme of terms and conditions where a licensee is relieved of its duty to supply without individual customer consent is permissible.

Our consultation proposed implementing this through modifications to sections 3.2.3, 4.2.3 and 5.2.3 of the REC. The purpose of these modifications is to remove the requirement for the consent of transferred customers in all instances before the supply duty is relieved. Instead, the REC will provide that the licensee may be relieved of its supply duty either by consent or in circumstances where a licensee has secured a commitment from another licensee to supply customers on equivalent terms.

For the reasons set out below, we consider that this proposed change will still mean that customers are adequately protected.

### **2.1.1 Customer protection**

A number of the provisions in the Exit Regulations and also in the REC apply not only to the acquiring licensee but also to any other licensee in the retail exit area. For example, the duty to supply applies not only to the acquiring licensee but also to any other licensee operating in the retail exit area. Similarly, all licensees operating in a retail exit area must have a scheme of terms and conditions. For this reason we consider that customers will be protected even if we amend the REC to provide that a licensee may terminate its duty to supply in certain specified circumstances. The new licensee will also have a duty to supply and must do so on an equivalent scheme of terms and conditions.

To protect customers' interests, our consultation proposed a further change to the REC requiring the licensee to give at least two months' notice that it intends to transfer its customers to another licensee (see section 6.1.2 in Appendix 1).

### **2.1.2 Customer consent or deemed consent**

Importantly, our proposal was aimed at removing an obstacle to the bulk transfer of customers by removing the prohibition on terminating a duty to supply unless there is customer consent. However, as a matter of contractual and commercial law, customers' consent or deemed consent will still be required before a company can transfer its obligations to another company.

As companies will take the commercial risk on any transfer, they should in all instances ensure that:

- their schemes of terms and conditions comply with the REC and with normal contractual provisions on the assignment of rights and obligations; and
- they take steps to ensure they have the deemed or actual consent of customers before effecting a transfer to another licensee.

## **2.2 Pass through of adjustments in wholesale charges**

We also proposed within our consultation an amendment to the REC to provide for licensees to set their charges for 2018-19 on a different basis and in line with adjustments to wholesale charges of appointed companies. We also proposed other consequential changes to relevant sections of the REC.

Taken together, these changes are intended to ensure that:

- the limit on charges should be adjusted in line with (i) changes in wholesale charges and (ii) any change that the relevant undertaker would have been

entitled or required to make to comply with the price controls for business retail activities set at PR16;

- restrictions should apply to the charges paid by individual transferred customers through the creation of “default tariffs” based on the charges set for those customers by the exiting relevant appointed company;
- no restrictions should apply to the charges payable by a transferred customer where the transferred customer freely chooses to pay different charges to those that they would otherwise be liable for (such customers are excluded from the price controls for business retail activities that Ofwat set at PR16); and
- the restrictions should protect transferred customers whose charges were set in or under individual agreements (also referred to as special agreements) with the relevant appointed company rather than in statutory charges schemes (even though the existing definition of “Permitted Adjustment” specifically refers to a “Charges Scheme”).



### 3. Responses to consultation

We received nine responses to our consultation; including from four retailers, four wholesalers and the Consumer Council for Water. The points raised in these responses, and our evaluation of those points, are summarised below.

Respondent	Summary of response	Our view
Business Stream Limited	<p><b>Response to Permitted Adjustment modification:</b></p> <p>Agree that the REC did not intend for licensees to absorb any increase in line with changes to the wholesale charges.</p> <p>Removal of any ambiguity in the definition of Permitted Adjustment in the REC is welcomed by Business Stream. It also welcomes the concept of “default tariffs”, however, in order to ensure transparency Business Stream suggests that these should be published by each retailer.</p> <p><b>Response to bulk transfer modification:</b></p> <p>It also agrees that the bulk transfer of customers between licensees is important and therefore supports removal of the barrier within the REC. The requirement to give not less than two months’ notice is considered to be appropriate.</p>	<p>We will be carrying out a more comprehensive review of the REC in due course, given that the current price protections in the REC are linked to PR16 which is due to expire in March 2020. That review will seek to establish what will happen after this period and as such is better placed to consider issues such as these.</p>
NWG Business Limited	<p>No objections to the proposed changes</p>	

Respondent	Summary of response	Our view
Thames Water Utilities Limited (TMS)	<p>TMS is supportive of the proposed changes.</p> <p><b>Response to bulk transfer modification:</b></p> <p>TMS state that the requirement to give not less than two months’ notice before a licensee can terminate its supply is consistent with consumer protection principles, but feel it could cause an issue if the transfer has been the result of an interim supply situation where there is an urgent need to action the transfer. TMS notes that it is Ofwat’s understanding that the Interim Supply arrangements would apply in that instance and not the REC. TMS however, feel that it would be helpful if Ofwat issued guidance on the situation where both the Interim Supply Code and REC are being applied.</p>	<p>We do not think that further guidance is required here. Our modifications in the context of a bulk transfer of customers between licensees are intended to remove a regulatory obstacle to such transfers, in specific circumstances only. The purpose of the Interim Supply Code (ISC) is clear in that it covers circumstances where a licensee has exited the market in other particular circumstances (for example because it has become a Defaulting Trading Party) and the processes for appointing an interim supplier are set out in that document and would apply in those cases. We therefore do not envisage situations where the provisions of both the ISC and REC would be applied. We will however keep this under review and will issue guidance in the future if necessary.</p>
Pennon Water Services Limited (PWS)	<p><b>Response to Permitted Adjustment modification:</b></p> <p>PWS welcomes the change to the REC enabling pass through of adjustments in wholesale charges and suggests the adjustment provides clarity on charging principles.</p> <p><b>Response to bulk transfer modification:</b></p> <p>Regarding consent before discontinuing supply, PWS welcomes the proposed changes, stating that the effective transfer of customers is essential to the continued success of the market and to prevent barriers</p>	<p>Extending statutory transfer schemes to cover Special Agreements will require statutory amendments. It is not, therefore, a change which Ofwat is able to make by way of</p>

Respondent	Summary of response	Our view
	<p>to entry. PWS expresses concern that customers supplied by a Special Agreement may only be transferred by Statutory Transfer Scheme (only available from an exiting undertaker to an acquiring licensee and not where there will be a bulk transfer arrangement, customers in this position are therefore at a disadvantage). PWS suggests an additional amendment to the REC permitting transfer of Special Agreements outside of the statutory transfer process.</p>	<p>modification to the REC. Consent of customers with a Special Agreement will still be required, unless the relevant agreement itself allows such transfers.</p>

<p>Consumer Council for Water (CCWater)</p>	<p><b>Response to bulk transfer modification:</b></p> <ol style="list-style-type: none"> <li>1. CCWater proposes that the REC wording should be made more specific to ensure that price and non-price terms are safeguarded after a transfer of customers – i.e. so that customers are transferred on identical terms.</li> <li>2. CCWater accepts some circumstances where removing the requirement for explicit consent makes sense. However it says that unless the circumstances in which this can be done are carefully defined, this could lead to detriment for customers. CCWater notes</li> </ol>	<ol style="list-style-type: none"> <li>1. The underlying purpose of the REC is to provide all customers in a retail exit area with backstop (or default) protection. Customers are also protected in that they maintain the ability to engage with, and switch to, another licensee on alternative terms, should they wish to do so. Customers are also protected by the new sections 3.2.3 (c) 4.2.3 (c) and 5.2.3 (c) of the REC, which require a transfer to a new licensee to be ‘on an equivalent scheme of terms and conditions’. In addition, Regulation 29 of the <a href="#">Exit Regulations</a>, which requires licensees to make a scheme of terms and conditions, also provides Ofwat with the power to direct that a scheme of terms and conditions be modified, and Regulation 30(3) provides that Ofwat can issue a direction requiring the licensee to comply with the REC. In both instances we have the power to take enforcement action where such directions are not adhered to. We therefore, consider that customers being transferred to a new licensee already have sufficient protection without the requirement for further clarification within the REC itself.</li> <li>2. Sections 3.2.3, 4.2.3 and 5.2.3 define the limited set of circumstances within which a supply or service may be discontinued. The consultation only makes reference to the proposed insertion of sections 3.2.3(c), 4.2.3(c) and</li> </ol>
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	<p>that the consultation document states that the duty to supply would be relieved in a “limited set of circumstances”, suggesting more than one. However, the only circumstance explicitly stated in the consultation is where a licensee has secured a commitment from another licensee to supply customers on equivalent terms. CCWater has requested clarity on this point.</p> <p>3. CCWater suggests that notifying customers two months in advance of transfer may not be sufficient and suggests six months to allow customers time to consider alternative options.</p> <p><b>Response to Permitted Adjustment modification:</b></p> <p>4. CCWater acknowledges the requirement for a change to the wording in the REC relating to permitted adjustments. However, it suggests that the volume of wholesale tariffs could present a challenge to</p>	<p>5.2.3(c) as the other existing provisions will not be amended.</p> <p>3. Under the Regulations, an acquiring licensee that is taking over customers from an exiting undertaker must give customers two months’ notice. We do not think there is a reason for distinguishing the two situations and therefore concluded that customers being transferred between licensees should also be given two months’ notice. Ofwat considers that two months’ notice is adequate and provides sufficient time for customers to consider alternative options. Should a customer wish to switch following notification of transfer, once an agreement has been reached with a new retailer, a switching date can be agreed between six and 20 business days after the new retailer submits the transfer application to the existing retailer (unless the company is a micro-business, which is protected by an additional 7 day cooling off period before the new retailer can submit the transfer application).</p> <p>4. The REC provides backstop protection and the modification relating to the definition of Permitted Adjustment is to help strengthen this protection. It would be burdensome on retailers to match every single tariff,</p>
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	<p>some retailers in accurately applying the correct tariff to the correct customers.</p> <p>5. It also suggests any new REC wording should require retailers to ensure adjustments in wholesale charges are passed through correctly to individual customers or groups of customers.</p>	<p>although we would expect retailers to take appropriate steps to ensure that the correct tariff is being applied to the correct customer.</p> <p>5. If a retailer fails to comply with the REC (including by not making an appropriate Permitted Adjustment), section 30(4) of the <a href="#">Exit Regulations</a> gives Ofwat the power to give the retailer a direction to comply with the REC. A failure to comply with a direction issued by us can lead to enforcement action (under section 18 of the Water Industry Act 1991). It is not considered that additional wording is required to ensure Permitted Adjustments are correctly administered given that there is an effective remedy for such eventualities.</p>
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Respondent	Summary of response	Our view
Anglian Water Service Limited (ANH)	ANH note the proposed changes will improve the code and help to deliver against the market principles of proportionality and transparency. It has no further comments	
Water Plus Limited	Agree with the proposed changes	
South East Water Limited (SEW)	<p>1. SEW supports the proposed changes to the REC in order to remove barriers to transfer and clarify provisions relating to charging</p> <p><b>Response to bulk transfer modification:</b></p> <p>2. Regarding transfers between licensees, SEW highlights that 'discontinuance of supply' in the proposed wording can have differing meanings – disconnecting or cutting off water supply or ending the supplier-customer relationship (normally without interruption to supply). SEW suggests referring to each type as appropriate to make the provisions easier to understand.</p> <p>3. SEW has highlighted that the definition of Eligible Licensee within the Exit Regulations excludes Licensee's that have elected to not be included on the list of Eligible Licensees held by Ofwat. SEW has suggested that because the term 'Eligible Licensee' is used in the proposed new sections 3.2.3 (c), 4.2.3 (c) and 5.2.3 (c), the regulatory obstacle to those who have elected not to be included on the relevant lists will still exist.</p> <p>4. SEW agrees with including conditions relating to transfers (3.2.3, 4.2.3 and 5.2.3) to ensure consumer protection but suggests these</p>	<p>2. The concept of 'discontinuing a supply' is used in the Exit Regulations (Regulation 26). It is not defined in the Regulations and it will therefore be for a court to definitively conclude its meaning. On a narrow interpretation (i.e. that it only means cutting off of a supply), the change to the REC would not be necessary. We have concluded that it could be interpreted to also mean ending the supplier-customer relationship and therefore the amendments to the REC are not required.</p> <p>3. We have amended sections 3.2.3 (c), 4.2.3 (c) and 5.2.3 (c) by replacing the term 'Eligible Licensee' with 'Licensee', where required, to remove the regulatory obstacle to transfer for all licensees. The amendments can be reviewed in <a href="#">Appendix 1</a>.</p> <p>4. In the consultation version of the REC changes, section 6.1.2(b) (formerly proposed section 6.2.1(b)) included</p>

Respondent	Summary of response	Our view
	<p>conditions should not be such that they create barriers to effective transfers.</p> <p>5. Suggest that there is a consent condition (“customer does not object to the transfer”) in 6.2.1(b) (now section 6.1.2(b)) which it considers is unnecessary as customers’ terms and conditions are already protected by 3.2.3, 4.2.3 and 5.2.3. Also suggests the consent condition in 6.2.1(b) (now section 6.1.2(b)) is a potential barrier to effective transfers between licensees.</p> <p>6. The benefit of a contract can normally be assigned without consent, and terms and conditions of suppliers usually expressly authorise assignments. It is also common in asset purchase agreements that the buyer will assume the obligations and liabilities of the seller. SEW suggests that introducing a consent requirement may interfere with such arrangements.</p> <p>7. A licensee may have at any time customers who have agreed terms and customers on the terms and conditions set out in a scheme of</p>	<p>the words ‘if the Eligible Exit Area Customer does not object to the transfer’. This was not introducing a consent criterion. A customer always has the ability to object and we cannot remove that ability via an amendment to the REC. What we are instead doing is removing the duty to supply, even if the customer objects. In those circumstances, the customer must seek a new retailer or ask Ofwat to appoint a retailer. We have, however, amended section 6.1.2(b) (formerly proposed section 6.2.1(b)) to clarify the wording (see highlighted text in Appendix 1).</p> <p>5. As above, as there is not an intention to introduce a consent criterion, we do not consider that contractual arrangements will be affected by the amendment. We have clarified the wording within the REC to make this clear.</p> <p>6. If customers are on agreed terms, their consent to a transfer will be required, unless the wording of the special agreement allows for such transfers without consent. See also response to PWS above.</p> <p>7. If customers are on agreed terms, their consent to a transfer will be required, unless the wording of the</p>



Respondent	Summary of response	Our view
	<p>terms and conditions. SEW believes that introducing a consent condition will make transfers cumbersome as different rules would apply depending on whether customers are on agreed terms or a scheme of terms and conditions.</p> <p><b>Response to Permitted Adjustment modification:</b></p> <p>8. Agrees with proposed changes relating to the definition of permitted adjustment.</p>	<p>special agreement allows for such transfers without consent. See also response to PWS above.</p>
<p>Yorkshire Water Limited (YKY)</p>	<p>YKY fully support the proposed modifications.</p> <p><b>Response to Permitted Adjustment modification:</b></p> <p>In the second line of paragraph (2) of the definition of Permitted Adjustment, Yorkshire Water highlights that it appears the word "been" has been omitted. "Eligible Premises are located would have <u>been</u> entitled or required to make"</p>	<p>This omission has been addressed in our final version of the REC modification (see appendix 2)</p>

## 4. Our decisions

Following consultation and careful consideration of the responses received, we have decided to make modifications to the REC which are summarised below.

The modifications made to the REC following our decisions can be viewed in full in Appendix 1 of this document. The text highlighted in yellow indicates changes from the original consultation.

### 4.1 Bulk transfer of customers – consent before discontinuing supply

We have modified sections 3.2.3, 4.2.3 and 5.2.3 to enable the bulk transfer of customers in defined circumstances. Following consultation, we have amended sections 3.2.3 (c), 4.2.3 (c) and 5.2.3 (c) by replacing the term ‘Eligible Licensee’ with ‘Licensee’, where required, to remove the regulatory obstacle to transfer for all licensees. It should be noted, however, that as a matter of contractual and commercial law, customers’ consent or deemed consent will still be required before any company can transfer its obligations to another company.

To ensure protection of customers’ interests, we have amended section 6.1.2 to require a licensee to give at least two months’ notice that it intends to transfer its customers to another licensee.

Following receipt of responses to our consultation we have made further amendments to the modifications initially proposed. We have amended the wording of section 6.1.2, as the responses indicated that the previous drafting was insufficiently clear. The new drafting makes clear that the notification to customers must be sent at least two months before the transfer takes place. We have also clarified the wording of the section 6.1.2(b) to clarify that if a customer does not consent, even though the transfer is on equivalent terms, the customer’s primary remedy is to transfer to another retailer.

### 4.2 Pass through of adjustments in wholesale charges

We have amended the definition of Permitted Adjustment in section 1.1 of the REC. We have also made consequential changes to section 3.1.

Following a response to our consultation, we have addressed the omission of the word “been” in paragraph (2) of the revised definition of Permitted Adjustment.

## **5. Conclusion and next steps**

We have considered the responses to our consultation and have made amendments to the modifications to be implemented, where this was considered appropriate. The final modifications to the REC are detailed in Appendix 1.

We will also publish a revised version of the REC on our website.

Licensees will then need to amend their existing Schemes of Terms and Conditions to reflect the updated REC and publish the updated Schemes on their websites, and send a version to Ofwat in line with section 2.3.4 of the REC.

## Appendix 1 – modifications to the REC

### Revised wording proposed within our consultation to replace or add to relevant sections of the Code (changes from consultation version highlighted in yellow)

#### 1.1 Defined terms

“Permitted Adjustment” – for each Transferred Customer who has not freely chosen to pay different charges to those that they would otherwise be liable for, the Permitted Adjustment is the sum of:

- (1) the change in the Wholesale Charges payable by the Acquiring Licensee; plus
- (2) any change in charges that the relevant undertaker for the Exit Area in which the Transferred Customer’s Eligible Premises are located would have **been** entitled or required to make pursuant to the Authority’s determination of Price Controls for Business Retail Activities (made under the relevant undertaker’s Appointment) that was notified to the relevant undertaker on 15 December 2016 (save that, for the purposes of calculating the Permitted Adjustment, references to “wholesale revenue” in that determination shall be read as references to the Wholesale Charges payable by the Acquiring Licensee).

~~the adjustment that the relevant undertaker for the retail exit area in which the Transferred Customer’s Eligible Premises are located would have been entitled or required to make to the part of the Charges Scheme applicable to the Transferred Customer and/or Eligible Exit Area Customer pursuant to the notice given by the Authority to the relevant undertaker on 16 December 2016 of a determination of price controls under that undertaker’s Appointment save that, instead of “wholesale revenue”, the Licensee shall include the relevant Wholesale Charges for the class of customer which would include the Transferred Customer and/or Eligible Exit Area Customer. This adjustment would include the possibility of making adjustments to tariffs to rebalance charges between customers and to make adjustments to meet control limits, in each year to which the determination of price controls applies, as would apply had the undertaker not exited.~~

#### 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 in the period from 1 April 2017 to 31 March 2020 do not exceed:

- (a) initially, 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; and
- (b) thereafter, those charges as adjusted on 1 April in each subsequent year by the Permitted Adjustment<sup>1</sup>.

~~3.1.2 The Acquiring Licensee shall adjust the maximum charges payable by Transferred Customers on 1 April each year by the Permitted Adjustment. The price terms may allow higher charges to be paid by a Transferred Customer where the Transferred Customer freely chooses to pay different charges to those that they would otherwise be liable for.~~

### **New Section 3.2.3**

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

- (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; or
- (c) the Acquiring Licensee sells or otherwise transfers ownership of all or part of its business to an Eligible another Licensee who offers a supply to the Transferred Customer on an equivalent Scheme of Terms and Conditions.

### **New Section 4.2.3**

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

- (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; or

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<sup>1</sup> To be clear, the Permitted Adjustments are cumulative. In other words, in year 3 the maximum charge should be the charge that would have been paid on the Exit Date if a customer of the relevant Undertaker plus the Permitted Adjustment on first subsequent 1 April plus the Permitted Adjustment on the second subsequent 1 April.

- (c) the Eligible Licensee sells or otherwise transfers ownership of all or part of its business to another Eligible Licensee who offers a supply to the Eligible Exit Area Customer on an equivalent Scheme of Terms and Conditions.

### **New Section 5.2.3**

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

- (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; or
- (c) the Eligible Licensee sells or otherwise transfers ownership of all or part of its business to another Eligible Licensee who offers a supply to the Eligible Exit Area Customer on an equivalent Scheme of Terms and Conditions.

## **Section 6**

**Insert new section 6.2 6.1.2 as follows:**

~~6.2.4~~ 6.1.2 As soon as possible ~~and not later than~~ but at least two months ~~of before~~ the date ~~before on~~ which the Licensee discontinues supply pursuant to sections 3.2.3 (c), 4.2.3 (c) or 5.2.3(c) to ~~to the Transferred Customer or Eligible Exit Area Customer~~ under the applicable Scheme of Terms and Conditions, the Licensee shall write to its Eligible Exit Area Customers providing the following information:

- (a) the name and contact details of the new Licensee to which it is selling or otherwise transferring ownership to of all or part of its business
- (b) the date on which supply will be discontinued and supply from the new Licensee will commence, if the Eligible Exit Area Customer does not ~~object to the transfer~~ ~~elect to switch to another provider of water and/or sewerage services~~;
- (c) a copy of the applicable Scheme of Terms and Conditions and confirmation that the new Licensee will supply on an equivalent Scheme of Terms and Conditions;
- (d) that the Eligible Exit Area Customer has the right to switch to another provider of water and/or sewerage services at any time; and

- (e) that alternative terms and conditions from the applicable Scheme of Terms and Conditions may be available from the new Licensee and how information about such alternative terms and conditions may be obtained.

~~6.1.3~~ 6.1.4 If an Eligible Exit Area Customer requests a copy of alternative terms and conditions that the Licensee (or new Licensee if paragraph 6.1.2 applies) has available, the Licensee (or new Licensee) shall provide these within 10 Business Days after receiving the request.

~~6.2.3~~ If the Eligible Exit Area Customer requests a copy of alternative terms and conditions that the new Licensee has available, the new Licensee shall provide these within 10 business days after receiving the request.