

Retail Exit Code

Issued by the Water Services Regulation Authority pursuant to Regulation 30 of The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016

Effective on 1 April 2017

(With tracked changes)

Change History

| Version Number | Date of Issue | Reason For Change | Sections Affected |
|----------------------|----------------------------|--|---|
| V2.0 | 26/01/2018 | Modifications to the Retail Exit Code - a consultation | 1.1 "Permitted Adjustment" (1) & (2) 3.1.1 (a) & (b) 3.1.2 3.2.3 (b) & (c) 4.2.3 (b) & (c) 5.2.3 (b) & (c) 6.1.2 6.1.4 |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Contents

| | | |
|-----|---|----|
| 1. | Definitions and interpretation | 4 |
| 1.1 | Defined terms | 4 |
| 1.2 | Interpretation..... | 6 |
| 2. | Introduction..... | 9 |
| 2.1 | Purpose of this code | 9 |
| 2.2 | Scope of this code | 9 |
| 2.3 | Types of Schemes of Terms and Conditions | 9 |
| 3. | Provisions about Schemes of Terms and Conditions for Transferred Customers..... | 11 |
| 3.1 | Price requirements..... | 11 |
| 3.2 | Non Price requirements | 11 |
| 4. | Provisions about Schemes of Terms and Conditions for Eligible Exit Area Customers who are SMEs..... | 13 |
| 4.1 | Price requirements..... | 13 |
| 4.2 | Non Price requirements | 13 |
| 5. | Provisions about Schemes of Terms and Conditions for Eligible Exit Area Customers who are not SMEs..... | 15 |
| 5.1 | Price requirements..... | 15 |
| 5.2 | Non Price requirements | 15 |
| 6. | Provision of information to Customers..... | 17 |

Deleted: 12

1. Definitions and interpretation

1.1 Defined terms

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

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

| Definitions | |
|---|---|
| Term | Definition |
| "Exit Date" | as defined in the Exit Regulations |
| "Exit Regulations" | means The Water and Sewerage Undertakers (Exit from Non-Household Retail Market) Regulations 2016 |
| "Go Live Date" | 1 April 2017 |
| "Law" | as defined in the Wholesale-Retail Code |
| "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" | <p><u>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:</u></p> <ol style="list-style-type: none"> (1) <u>the change in the Wholesale Charges payable by the Acquiring Licensee; plus</u> (2) <u>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).</u> |
| "Scheme of Terms and Conditions" | the scheme or schemes made by Licensees pursuant to Regulation 29 of the Exit Regulations |
| "Small and Medium-sized Enterprise (SME)" | an Eligible Exit Area Customer with fewer than 250 employees. |

Deleted: 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.

| Definitions | |
|---------------------------|--|
| Term | Definition |
| “Transferred Customer” | the owner or occupier of Eligible Premises which were transferred to the Acquiring Licensee on the Exit Date |
| “Wholesale Charges” | as defined in the Wholesale-Retail Code |
| “Wholesale - Retail Code” | the code issued by the Authority under sections 66DA and 117F of the 1991 Act |

1.2 Interpretation

1.2.1 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.
- (r) If there is any conflict between any of the following, the order of precedence shall be:
 - (i) any Law other than any Appointment, any Licence, the Market Arrangements Code, the Wholesale Retail Code, the Interim Supply Code, the Retail Exit Code and the Customer Protection Code of Practice;
 - (ii) any Appointment or Licence;
 - (iii) the Market Arrangements Code;
 - (iv) the Wholesale-Retail Code;
 - (v) the Interim Supply Code and the Retail Exit Code;
 - (vi) the Customer Protection Code of Practice.

2. Introduction

2.1 Purpose of this code

- 2.1.1 This document is the code issued by the Authority pursuant to Regulation 30 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. A Scheme of Terms and Conditions which is produced to comply with Section 3 shall apply to the supply of water and/or provision of sewerage services to Transferred Customers only, in the absence of agreed terms.
- 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. A Scheme of Terms and Conditions which is produced to comply with Section 4 shall apply to the supply of water and/or provision of sewerage services to Eligible Exit Area Customers who are SME's in the absence of agreed terms. This may

include circumstances where the Licensee has received a direction from the WSRA to supply that Eligible Exit Area Customer pursuant to the Exit Regulations or where agreed terms with that Eligible Exit Area Customer have terminated or expired without new terms being agreed and the Licensee has continued the supply of water and/or provision of sewerage services.

- 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. A Scheme of Terms and Conditions which is produced to comply with Section 5 shall apply to the supply of water and/or provision of sewerage services to Eligible Exit Area Customers in the absence of agreed terms. This may include circumstances where the Licensee has received a direction from the WSRA to supply that Eligible Exit Area Customer or where agreed terms with that Eligible Exit Area Customer have terminated or expired without new terms being agreed and the Licensee has continued the supply of water and/or provision of sewerage services.
- 2.3.4 Any Scheme of Terms and Conditions should be published on the licensee's website in accordance with section 29(3)(a) of the Exit Regulations and provided to the Authority by email to retailexitcode@ofwat.gsi.gov.uk, in accordance with section 29(3)(b) of the Exit Regulations.

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

3.1 Price requirements

3.1.1 Subject to section 3.1.2, the price terms included within a Scheme of Terms and Conditions for Transferred Customers, must ensure that the charges payable by the Transferred Customer do not exceed 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 Adjustment¹.

3.1.2 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.

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

3.2 Non Price requirements

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

Deleted: in making

Deleted: to be

Deleted: the Acquiring Licensee

Deleted: that would have been payable on the Exit Date by that Transferred Customer had they been able to remain with the relevant undertaker.

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

¹To 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.

- 3.2.2 the Scheme must be consistent with Acquiring Licensee's obligations under its Licence and applicable law.
- 3.2.3 A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if
- (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 another Licensee who offers a supply to the Transferred Customer on an equivalent Scheme of Terms and Conditions.](#)
- 3.2.4 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.
- 3.2.5 Where a Transferred Customer relocates within the same Area the Acquiring Licensee should continue to offer the same Scheme of Terms and Conditions.

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

4.1 Price requirements

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

4.2 Non Price requirements

- 4.2.1 In making the non-price terms for a Scheme of Terms and Conditions which applies to Eligible Exit Area Customers who are SMEs but who are not eligible to be supplied pursuant to the Scheme of Terms and Conditions for Transferred Customers, a Licensee shall comply with the following principles:
- 4.2.2 the Scheme of Terms and Conditions must be consistent with the Licensee's obligations under its Licence and applicable law.
- 4.2.3 A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if
- (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 Licensee sells or otherwise transfers ownership of all or part of its business to another Licensee who offers a supply to the Eligible Exit Area Customer on an equivalent Scheme of Terms and Conditions.](#)

4.2.4 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.

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

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

5.1 Price requirements

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

5.2 Non Price requirements

- 5.2.1 In making the non-price terms for a Scheme of Terms and Conditions which applies to Eligible Exit Area Customers who are neither SMEs nor eligible to be supplied pursuant to the Scheme of Terms and Conditions for Transferred Customers, a Licensee shall comply with the following principles:
- 5.2.2 the Scheme of Terms and Conditions must be consistent with the Licensee's obligations under its Licence and applicable law.
- 5.2.3 A supply to be made or the services to be provided pursuant to a Scheme of Terms and Conditions may be discontinued only if
- (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 Licensee sells or otherwise transfers ownership of all or part of its business to another Licensee who offers a supply to the Eligible Exit Area Customer on an equivalent Scheme of Terms and Conditions.](#)

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.

6. Provision of information to Customers

6.1.1 As soon as possible and not later than two months of the date from which the Licensee commences supply to the Eligible Exit Area Customer under the applicable Scheme of Terms and Conditions, the Licensee shall write to the Eligible Exit Area Customer providing the following information:

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

6.1.2 As soon as possible but at least two months before the date on which the Licensee discontinues supply pursuant to sections 3.2.3 (c), 4.2.3 (c) or 5.2.3 (c) 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 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

Formatted: Font: 12 pt

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

6.1.4 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.