

November 2018

Trust in water

# **Modifications to the Wholesale Retail Code and the Customer Protection Code of Practice – a consultation**

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## 1. About this document

The suite of market codes were developed as part of the legal and regulatory framework designed to govern and underpin the Non-Household Retail Market. These codes are:

- **Market Arrangements Code** – makes provision for how the retail market operates, inclusive of appointing a Market Operator and providing how this operates and setting up a Panel to oversee specific codes and any changes to these;
- **Wholesale Retail Code** – sets out the relationship between Wholesalers and Retailers, and how the market should operate;
- **Retail Exit Code** – places obligations on Licensees who acquired customers via a Retail Exit regarding terms and conditions;
- **Interim Supply Code** – provides the arrangements necessary to ensure continuity of supply and protections for consumers and other market participants where a Licensee ceases to supply, for example as a result of insolvency; and
- **Customer Protection Code of Practice** – sets out the minimum standards that all Retailers must comply with in their dealings with Non-Household Customers, it also sets out the minimum standards of behaviour that we expect from Retailers.

This document sets out, for consultation, changes we are proposing to make to the Wholesale Retail Code (“**WRC**”) and the CPCoP (“**CPCoP**”). To be clear, whilst the changes we are proposing are linked, the WRC and CPCoP have separate governance and modification processes. Further information has been included in section 6 of this document.

We are proposing changes to these codes to rectify an inconsistency between the Market Terms and Business Terms of the WRC, which in turn will require an amendment to the CPCoP. These changes primarily concern billing and invoicing following the issuing of a Final Settlement Report by the Market Operator. The proposed changes will not impact billing or invoicing arrangements prior to market opening in April 2017.

This consultation has been developed following a draft change proposal and Request for Information, published by the Panel Secretariat on 24 October 2018 relating to the proposed modification to the WRC. For clarity, the draft change proposal also included our proposed modifications to the CPCoP concerning billing and invoicing following the issue of a Final Settlement Report. During development

of this consultation and following consideration of responses to a Request for information, we are also seeking views on a number of additional amendments to the CPCoP.

The defined terms referred to in this document are as defined in the WRC, the CPCoP and the Market Arrangements Code (“**MAC**”), as appropriate.

## 2. Responding to this consultation

We welcome your thoughts on this consultation by **5 December 2018**. Sections 2.1 and 2.2 set out the specific questions for which we would welcome responses.

Please submit email responses to [codechange@ofwat.gsi.gov.uk](mailto:codechange@ofwat.gsi.gov.uk), with the subject **“WRC and CPCoP consultation”** or post them to:

WRC and CPCoP consultation  
Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham  
B5 4UA

We will publish responses to this consultation on our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk), unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the General Data Protection Regulation 2016, the Data Protection Act 2018, and the Environmental Information Regulations 2004. For further information on how we process personal data please see our [Privacy Policy](#).

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory ‘Code of Practice’ which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

## **2.1 Wholesale Retail Code Change Proposal Consultation questions**

1. What is your view of the change proposal to address the inconsistency in the WRC (explained in sections 8.1 and 8.2 of this document)? Please explain your answer and provide evidence to support your answer, where appropriate.
2. The effect of this change proposal would be that, in limited circumstances, the back-billing period for Non-Household Customers would be extended to 24 months. Do you consider that extending the back-billing period for Non-Household Customers in the limited circumstances described in this document to resolve the inconsistency in the WRC strikes a fair balance between maintaining adequate protections for Non-Household Customers whilst enabling the recalculation of Primary Charges, where necessary?
3. What is your view of how far the proposed legal drafting delivers the intent of the proposed changes as outlined by the Authority? Please explain your answer.
4. Please evidence how your business systems, processes and accounting may be impacted if the change proposal was implemented.
5. Do you consider that the change proposal better facilitates the Objectives and Principles of the WRC? Please explain your answer.

## **2.2 Customer Protection Code Change Proposal questions**

6. Do you consider that the Customer Protection Code Change Proposals (section 8.2 and 8.3) better facilitate the CPCoP General Principles? Please explain your answer.
7. What is your view of the proposed additional changes to the CPCoP (section 8.3)? Please explain your answer.
8. What is your view of the proposed implementation dates for the additional changes to the CPCoP proposed in section 8.3 of this document? Please explain your answer.
9. What are your views on amending the CPCoP to include an obligation on Retailers to keep Non-Household Customers informed throughout a

Dispute or a Post RF process that may result in them receiving a Back-bill?

## 3. Background

### 3.1 WRC

The inconsistency between the Market Terms and the Business Terms was identified through Panel discussions as part of its considerations of Change Proposal CPW039, which it submitted to us on 19 July 2018. The Panel's Final Report on CPW039 recommended that we defer Final Settlement Runs for a period of up to 12 Months, until September 2019, to allow time for data correction and thereby reduce the amount of inaccurate consumption data being crystallised when the first Final Settlement Run was completed following market opening.

We [approved the proposal, subject to prescribed modifications](#). We did not consider that the rationale and supporting evidence provided by the Panel for the deferral of the Final Settlement Runs for a period of up to 12 Months to be conclusive. However, we did consider that the rectification of the inconsistency in the WRC was of sufficient importance to warrant a deferral of the Final Settlement Runs. We therefore approved the proposal but amended the deferral period, allowing the deferral (subject to our discretion) until 31 December 2018 or, at the latest 28 February 2019. Consistent with the terms of the WRC, we formally notified the Market Operator and advised the Panel, by letter dated 23 October 2018 that the deferral will be until 28 February 2019, meaning Final Settlement Runs will commence in March 2019.

### 3.2 CPCoP

Given that the restrictions on invoicing after issue of the Final Settlement Report in the Market Terms and the CPCoP are linked, where a change is made to the Market Terms, a consequential change will be needed to the CPCoP. This consequential change is necessary to prevent Retailers from being exposed to charges incurred by a Non-Household Customer which they would then be unable to recover from that Non-Household Customer.

In addition to the proposed modification to address the inconsistency in the WRC, we are also consulting on a number of additional amendments to the CPCoP, namely:

- i. to require Retailers to pass on payments to Non-Household Customers where there has been a recalculation of Primary or Non-Primary Charges and a payment is made by the Wholesaler to the Retailer.

- ii. to amend the definition of 'Back-bill' and 'Reasonable Repayment Plan for a Back-bill' to account for the changes we are proposing to make to the restriction on billing.
- iii. to extend the requirement to issue a final bill within the specified timeframe to all Non-Household Customers, so that it no longer applies to Micro-businesses only.

These further changes are discussed in section 8.

## 4. Background to the Settlement Process in the WRC

The WRC sets out the Settlement Process which is the process of calculation of the Primary Charges in respect of each Supply Point. Settlement Runs are undertaken by the Market Operator as part of the Settlement Process, and there are six planned Settlement Runs for each Invoice Period, for the first six Invoice Periods (section 4.13.1 Market Terms). A Settlement Report is issued by the Market Operator after each Settlement Run. Settlement Reports are the only basis for invoicing Primary Charges. The last Planned Settlement Run is 'RF', and is, ordinarily, undertaken 16 months after the end of the relevant Invoice Period. Following the Final Settlement Run, the Final Settlement Report will be issued for the Invoice Period and the data is crystallised within the central system.

Under sections 2.2.8 and 3.2.8 of the Market Terms, Retailers and Wholesalers, as Data Owners, have a general duty to ensure that the Data Items for which they are the Data Owner are up to date, accurate and complete. Where the Data Owner itself identifies an error, it is under an obligation to correct the relevant Data Item(s) as soon as it becomes aware of the error. Trading Parties should therefore use the processes and procedures provided for in CSD 0105 (Error Rectification and Retrospective Amendments) to undertake error rectification and retrospective amendments before the Final Settlement Run, where this is possible.

The Market Terms provides that the Market Operator may carry out Unplanned Settlement Runs (section 4.13.4). There are three different types of Unplanned Settlement Run. These are

- i) Corrective;
- ii) Dispute; and
- iii) Post RF.

Trading Parties should rely on the next Planned Settlement Run and the Settlement Process wherever practicable in preference to using an Unplanned Settlement Run. All three types of Unplanned Settlement Run have individual Thresholds which must be met before they can be requested<sup>1</sup>. These Thresholds restrict availability of these runs and therefore limit the potential impact on Non-Household Customers.

### Corrective Settlement Run

The Corrective Settlement Run is a complete recalculation of all Supply Points in relation to one Invoice Period. Both the Wholesaler and Retailer must agree that

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<sup>1</sup> We are currently considering 'CPW046 – Changes to the Unplanned Settlement Process' which proposes reducing the Materiality Threshold for requesting Corrective Settlement Runs and increasing the timeframe within which they can be requested

there is a material error and jointly request this run. It can be completed in relation to any Planned Settlement Run, although must be requested pre-invoice. The Market Operator will undertake the Corrective Settlement Run as soon as possible following receipt of a request (Market Terms section 4.13.4(d)).

### **Post RF Settlement Run**

A Post RF Settlement Run can be undertaken after the Final Settlement Report has been provided by the Market Operator. The Wholesaler and the Retailer must agree a set of combinations of Supply Points and Service Components which are to be recalculated (Market Terms sections 4.13.4(e) and 4.14).

The Post RF Settlement Run can relate to one or more Invoice Periods and must be requested within 28 months of the date of publication of the relevant Final Settlement Report.

### **Dispute Settlement Run**

There are four types of Dispute:

- i) Trading Dispute;
- ii) Market Operator (MO) Dispute,
- iii) Market Arrangements (MA) Code Dispute; and
- iv) Non-Trading Dispute.

A Dispute Settlement Run may only be undertaken following a Trading Dispute or a MO Dispute.

Schedule 9, paragraph 3.2.2 of the MAC provides that Trading Parties can raise a Trading Dispute up to 28 calendar months after the date of publication of the Final Settlement Report in which the error in the Data Item occurred, except where a Trading Party wishes to dispute a Post RF Settlement Report, in which case it has 20 Business Days following receipt of that report in which to raise a Trading Dispute. Where the Trading Dispute has been referred to the Trading Disputes Committee it may, in some circumstances, require the Market Operator to perform a Dispute Settlement Run.

Where the Retailer and/or the Wholesaler consider that there has been Inaccurate Settlement, there are specified circumstances in which it/they are able to raise an MO Dispute. Following an MO Dispute, if referred to an expert, it may be considered that a Dispute Settlement Run is required.

## 5. The inconsistency

### 5.1 Inconsistency in the WRC between Market Terms and Business Terms

Section 4.14.8 of the Market Terms imposes a restriction on Wholesalers back-billing Retailers. It provides that:

“The Contracting Wholesaler shall not bill or invoice the Contracting Retailer for, or recover charges in respect of, water supplied or sewerage services provided to that Contracting Retailer’s Non-Household Customer for any period for which a Final Settlement Report has been provided by the Market Operator”.

This restriction prevents Wholesalers from updating invoices and bills, for both positive and negative sums, once the Final Settlement Report has been issued.

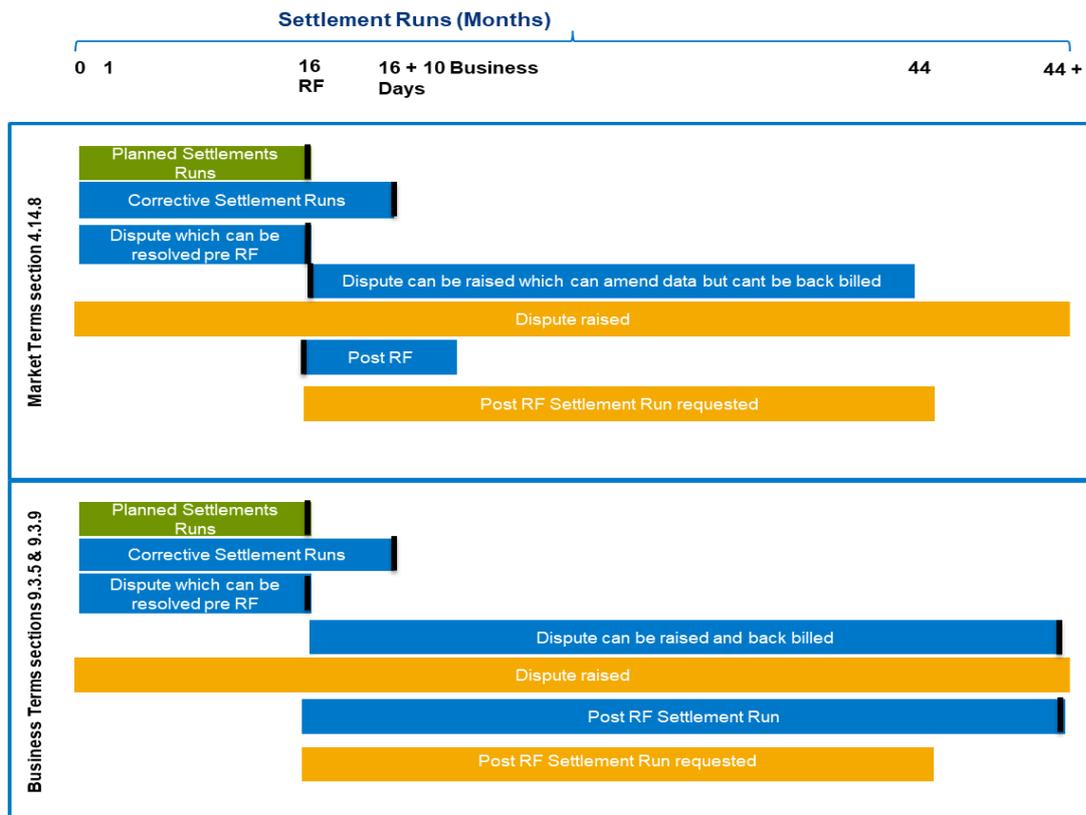
In contrast, section 9.3.9 of the Business Terms allows Wholesalers to issue a revised invoice based on an Unplanned Settlement Report, stating that:

“Subject to Section 9.5.3, the Contracting Wholesaler shall invoice the Contracting Retailer the Balances in conjunction with the statements referred to in Sections 9.3.1 to 9.3.5 (inclusive) and in accordance with its published invoicing calendar, but in any event within ten (10) Business Days of receiving each Settlement Report (whether for a Planned Settlement Run or an Unplanned Settlement Run) from the Market Operator and the Balance shown on such invoice shall be paid within fifteen (15) days after the date that the statement from the Contracting Wholesaler is received by the Contracting Retailer in accordance with Section 9.6”.

This means that Wholesalers are able to update invoices once the Final Settlement Report has been issued where there has been an Unplanned Settlement Run.

This inconsistency results in uncertainty for Trading Parties regarding billing and invoicing following the issue of a Final Settlement Report. In addition, there is currently an inconsistency concerning payments of negative amounts after a Final Settlement Report has been issued.

The below diagram shows the current inconsistency between the Market Terms and the Business Terms concerning billing and invoicing after a Final Settlement Report has been issued.



- Planned Settlement Runs
- Unplanned Settlement Runs
- Timeframe for raising a dispute/requesting a post RF Settlement Run
- Restriction on back-billing

## 5.2 Customer Protection Code of Practice

The CPCoP sets out for Retailers how they should interact with and treat Non-Household Customers, including micro-businesses. It is designed to protect Non-Household Customers by imposing obligations on Retailers. It covers

- Sales and Marketing;
- Provision of Information to Non-Household Customers;
- Transfers of Non-Household Customers;
- Billing; and
- Complaint Handling and Dispute Resolution.

Section 9.3.1 imposes a similar restriction to that in the Market Terms on Retailers back-billing Non-Household Customers, it provides that:

“Retailers shall not bill or invoice a Non-Household Customer for or recover charges in respect of water supplied or sewerage services provided to that Non-Household Customer for any period for which a Final Settlement Report has been provided by the Market Operator”.

The restriction on the back-billing of Non-Household Customers normally equates to approximately 16 months because this is the time in which the Market Operator is ordinarily required to issue the Final Settlement Report for a particular Invoice Period.

Given that the restrictions on back-billing in the Market Terms and the CPCoP are linked it is necessary that, where a change is made to the Market Terms, a consequential change will need to be made to the CPCoP. A failure to make the consequential change would result in Retailers being exposed to charges incurred by a Non-Household Customer which they would then be unable to recover from that Non-Household Customer.

## 6. The proposal

### 6.1 Wholesale Retail Code Change Proposal

The Authority is proposing modifications to the WRC. We have amended our proposal following consideration of responses to the Request for Information on our draft change proposal to be clear that the restriction on billing and invoicing does not apply to negative sums, this is explained further in section 8.4.

Our proposal is that it will be possible for a Wholesaler to bill or invoice a Retailer for a positive sum based on a Post RF Settlement Report or a Settlement Report issued after a Dispute, for a maximum period of eight Months after the Final Settlement Report has been issued. This means that the timeframe for billing or invoicing for a positive sum based on a Post RF Settlement Report or a Settlement Report issued following a Dispute only would be limited to a maximum of 24 months from the end of the relevant Invoice Period.

If a Dispute remains ongoing when the eight Months has elapsed after provision of the Final Settlement Report, any Settlement Report issued by the Market Operator following a Dispute shall not be used for the purpose of billing or invoicing. Trading Parties will not be prevented from resolving a Dispute via the existing mechanisms set out in the Business Terms of the WRC and the MAC, and undertaking data rectification to reflect the outcome of the Dispute (including seeking a Dispute Settlement Run), once the eight Months elapsed. However, it will not be permissible to issue an invoice or bill based on any such amendments after this time except where the bill or invoice is for a negative sum. This restriction on billing and invoicing will not prevent any bill or invoice for a negative sum i.e. refunds or account credits.

Similarly if a Wholesaler and Retailer agreed to request a Post RF Settlement Run, or are provided with a Post RF Settlement Report where the eight Months has elapsed following the issue of the Final Settlement Report, this could not be used for the purposes of billing or invoicing for a positive sum.

The proposed modifications to the WRC are set out in Appendix 1. For this change proposal we propose an implementation date of **28 February 2019**.

### 6.2 Customer Protection Code Change Proposal

The Authority is proposing amendments to the CPCoP to ensure the back-billing provisions are consistent with the relevant provisions which govern billing and

invoicing by the Wholesaler to the Retailer within the WRC. We have aligned our proposal for the CPCOP to be consistent with the changes we have made following consideration of responses to our draft change proposal on the WRC. The amendments mean that the restriction on billing and invoicing does not apply to negative sums. This is explained further in section 8.4.

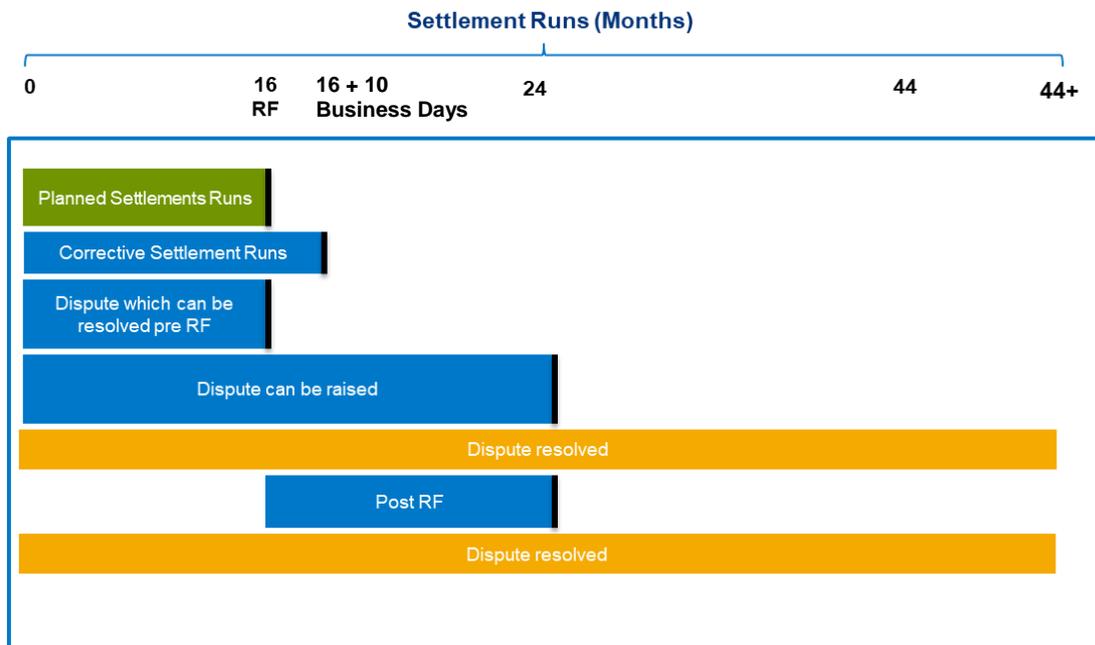
We consider that it is important to align the restriction imposed on Retailers back-billing Non-Household Customers within the CPCoP to any similar restriction imposed on Wholesalers back-billing Retailers in the WRC to ensure that Retailers are not left exposed to charges from a Wholesaler which they are then unable to recover from the relevant Non-Household Customer.

Consistent with the change we are proposing to the WRC, we propose imposing a restriction on Retailers billing and invoicing Non-Household Customers up to a maximum of 24 Months. This restriction on billing and invoicing will not however, apply to a bill or invoice for a negative sum i.e. refunds or account credits. The restriction for back-billing Non-Household Customers will ordinarily remain at approximately 16 Months. The only exception to this being where a Post RF Settlement Report or a Settlement Report following a Dispute is issued, in which case a Retailer would have an additional eight Months after provision of the Final Settlement Report by the Market Operator (a total of 24 Months following the end of the Invoice Period to which the bill relates) to back-bill the Non-Household Customer.

The proposed modifications to the CPCoP are set out in Appendix 1. For this change proposal we propose an implementation date of **28 February 2019**.

To be clear that the restriction on billing and invoicing does not apply to negative sums, this is explained further in section 8.4.

## 6.3 Overview of the Proposal



- Planned Settlement Runs
- Unplanned Settlement Runs
- Timeframe for raising a dispute/requesting a post RF Settlement Run
- | Restriction on back-billing

## 6.4 Additional proposed changes to the CPCoP

In addition to the changes outlined above to resolve the identified inconsistency, we believe it is necessary to make additional changes to the CPCoP. These are set out below.

### 6.4.1 Payments

We propose modifying the CPCoP to require Retailers to pass payments on to Non-Household Customers where there has been a recalculation of Primary and Non-Primary Charges and a payment is made by the Wholesaler to the Retailer.

In addition, we propose including a provision within the CPCoP to ensure that Retailers include information as to how they will comply with the requirement to pass payments on to Non-Household Customers in their Terms and Conditions of Supply.

The proposed modifications to the CPCoP are set out in Appendix 1. For this proposal we propose an implementation date of **three months after the date of the decision document**.

#### **6.4.2 Amending the definition of back-bill and Reasonable Repayment Plan for a Back-bill**

We propose amending the definition of ‘Back-bill’ and ‘Reasonable Repayment Plan for a Back-bill’, to amend the current 12 Month timeframe allowed so that it aligns with the proposed 24 Month restriction on back-billing. This will ensure that where a Micro-business receives a back-bill, it will be possible to arrange a Reasonable Repayment Plan for the Back-bill for the entire period of the Back-bill rather than for a lesser period of 12 Months.

The proposed modifications to the CPCoP are set out in Appendix 1. For this proposal we propose an implementation date of **three months after the date of the decision document**.

#### **6.4.3 Issue of a final bill**

The CPCoP provides clarity for Micro-businesses as to when they should receive a final bill when they Transfer Retailers or their existing Terms and Conditions of Supply expire. We propose extending this requirement regarding the issue of a final bill to benefit all Non-Household Customers.

The proposed modifications to the CPCoP are set out in Appendix 1. For this proposal we propose an implementation date of **three months after the date of the decision document**.

##### **Key points:**

- **Retailers and Wholesalers have a general duty to ensure that the Data Items are up to date, accurate and complete**
- **The restriction on back-billing will be approximately 16 months except in limited circumstances where a Post RF or Dispute Settlement Run is required**
- **We are not making any amendments to the Corrective Settlement Run process**
- **Where there has been a recalculation of Primary or Non-Primary Charges we expect payments by Wholesalers to be passed onto Non-Household Customers**
- **We consider that Non-Household Customers should be given more time to pay a Back-bill**
- **A final bill should be provided to all Non-Household Customers within six weeks of switching or expiry of Terms and Conditions of Supply**

## **7. Code governance and modification processes**

Given that the proposed changes to the WRC and the CPCoP are intrinsically linked, to reduce the pressure on industry and maintain as efficient an approach as possible, we have decided to consult on the proposals under one consultation. However, the WRC and the CPCoP have separate governance and modification processes. We have provided detail of these processes below.

### **7.1 Wholesale Retail Code**

Section 6 of the MAC provides the change process in respect of the WRC. The change we are proposing to make under the WRC is an Authority Timetabled Change Proposal, and as such we must set out the process that should be followed. We have provided the Panel Secretary with the timetable and process for this Authority Timetabled Change Proposal in accordance with section 6.3.2 of the MAC, and, in this instance, this includes us issuing a consultation on our proposed amendment to the WRC. This is because of the need to align any amendments to the WRC with the CPCoP.

Our intention is to raise the Authority Timetabled Change Proposal with the Panel the week commencing 7 January 2019 and we have informed the Panel Secretary that the proposal should be considered at a Panel meeting during the week commencing 14 January 2019. We have requested that the Final Report be provided to us by 18 January 2019.

Following receipt of the Final Report, we will issue our consultation on our proposed decision on the Customer Protection Code Change Proposal (see below). We will await the closure of that consultation and consider the responses prior to publishing our final decision on this Authority Timetabled Change Proposal.

### **7.2 Customer Protection Code of Practice**

Where the Authority raises a change proposal under the CPCoP, section 5.1.1 requires us to consult with any affected Retailer and any other person the Authority considers appropriate. This consultation is intended to satisfy this requirement.

Following this consultation and after consideration of the responses, we will separately consult on our proposed decision to accept, reject or amend the Customer Protection Code Change Proposal as required by section 5.2.2 of the CPCoP.

After the consultation under section 5.2.2 has concluded, responses will be considered and a final decision will be made as soon as reasonably practicable. We will make a final decision on the Customer Protection Code Change Proposal to align with the WRC by no later than 28 February 2018.

In accordance with section 5.2.4, our final decision shall include:

- The reasons for the proposed change;
- The scope and impact of the potential change, including consideration of potential risks;
- An evaluation against our statutory duties and the Code Principles;
- Any relevant evidence considered (including consultation responses received);
- Implementation timescales; and
- The date from which the change will take effect.

### **7.2.1 Urgency of the proposal**

As stated above, we will be issuing a further consultation on our decision to accept, reject or amend the Customer Protection Code Change Proposal as required by section 5.2.2 of the CPCoP. The consultation under section 5.2.2 of the CPCoP should generally be for a minimum of 28 calendar days, except in the case of urgency.

We have deferred the RF Settlement Run under the WRC until 28 February 2019 to enable us time to resolve the inconsistency in the WRC. Any code modification to address this issue must be implemented by this date to avoid uncertainty regarding a Wholesaler's ability to invoice a retailer following issue of the Final Settlement Report.

We consider it necessary that any code modifications made to the WRC following this consultation and the subsequent consultation on our proposed decision on the CPCoP, should be implemented at the same time. This is to ensure that the regulatory framework is aligned and that Retailers are not left exposed to charges which they are unable to recover from the relevant Non-Household Customers, should the change to the WRC be implemented prior to any change being made to the CPCoP in relation to the restriction on back-billing. Equally, we also want to ensure that the necessary provisions are in place and consistent across the various Codes to ensure that where credits or refunds are due, that they are processed efficiently.

As the proposed change to the CPCoP regarding the restriction on back-billing is intrinsically linked to our proposed solution to rectify the inconsistency in the WRC, we consider the Customer Protection Code Change Proposal to be urgent. The decision on this proposal should also be made by 28 February 2019. In order to ensure that any changes are implemented at the same time, it may be necessary to consult for a period shorter than 28 calendar days generally required under the CPCoP. We will, however, ensure that affected Retailers and relevant consumer bodies are notified of the consultation when this is published.

Under the governance of the CPCoP, we do not consider that the additional changes we are proposing to make to the CPCoP (discussed in section 8.3) are urgent. We developed these proposed additional changes when considering responses to the Request for Information and during preparation of this consultation. Although these additional changes are linked to the original proposal detailed within the Request for Information, section 5.2.2 of the CPCoP requires us to consult on our proposed decision for the full 28 calendar days where a change is not considered to be urgent. As such, we will issue a separate consultation on our proposals:

- i. to require Retailers to pass payments on to Non-Household Customers where there has been a recalculation of Primary and Non-Primary Charges and a payment is made by the Wholesaler to the Retailer;
- ii. to amend the definition of 'Back-bill' and 'Reasonable Repayment Plan for a Back-bill' to account for the changes we're proposing to make to the restriction on billing; and
- iii. to extend the requirement to issue a final bill within the specified timeframe to all Non-Household Customers, rather than Micro-businesses only.

## 8. Analysis of the inconsistency

### 8.1 Restriction on back-billing Non-Household Customers

The CPCoP, when published, placed a restriction on the back-billing of all Non-Household Customers which equated to approximately 16 months. We consider it is important to maintain appropriate protection for Non-Household Customers from receiving long back dated bills, but must also preserve the mechanisms for Trading Parties to amend inaccurate data enabling longer-term accurate invoicing and billing for the benefit of the market as a whole. We consider, however, that this should only be in limited and time-bound circumstances, following provision of the Final Settlement Report.

When considering options to resolve the inconsistency in the WRC we have sought to strike a balance between enabling the recalculation of Primary Charges where there has been a material error in the Settlement Report and the protection of Non-Household Customers.

### 8.2 Analysis of other sectors

We considered how back-billing is managed for Non-Household Customers in other sectors, including Energy, Telecoms and for Water in Scotland. We noted that, in general, Non-Household Customers are only protected by statutory limits (of six years) to back-billing.

Restriction on back-billing	Sector	
	Energy	Telecoms
Business Customers	Statutory (except for microbusinesses – 12 months) *	Statutory

### 8.3 Hierarchy of the codes

When reviewing the options to resolve the WRC inconsistency, consideration has been given to the hierarchy of the codes as provided in the Wholesale Retail Code. Section 1.9 of the Objectives, Principles and Definitions of the WRC provides that:

“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”

We note that the WRC takes precedence over the CPCoP.

## **8.4 Request for Information – WRC Change Proposal**

We submitted a draft change proposal to the Panel on 23 October 2018. This set out our proposal to address the inconsistency between the Market Terms and Business Terms with regard to invoicing based on reports provided by the Market Operator following Post RF or Dispute Settlement Runs.

A Request for Information which sought views on our approach to addressing the identified inconsistency was published on 24 October 2018 and closed on 7 November 2018. This Request for Information included detail of our Customer Protection Code Change Proposal to amend the restriction on back-billing (section 8.2). We have considered the responses received prior to publishing this consultation and have amended our proposal to reflect responses where appropriate.

Nine Wholesalers, nine Retailers and the Consumer Council for Water responded to the Request for Information.

### **8.4.1 Views of the proposal and whether it strikes a fair balance**

Overall, eight Retailers and eight Wholesalers expressed support for the proposed changes outlined within the draft change proposal. Eight Retailers and seven Wholesalers considered that extending the back-billing period for Non-Household Customers to resolve the inconsistency in the WRC strikes a fair balance between maintaining adequate protections for Non-Household Customers whilst enabling the recalculation of Primary Charges.

A Retailer suggested that as the market matures the Market Operator/Ofwat should consider the extent to which the eight Month period, for billing or invoicing following the Final Settlement Report being provided, is required. Others recommended that consideration should be given to making the proposed changes time limited. We expect that Post RF and Dispute Settlement Runs may only be carried out in accordance with the Market Terms – that is, only where necessary and only where the relevant Materiality Thresholds have been met. We consider that the majority of errors will have been identified and corrected prior to the RF Settlement Run. However, we note that unidentified or erroneous material errors can occur, for which we consider there should be a mechanism for amendment within a reasonable timeframe.

One Retailer and the Consumer Council for Water were not supportive of the proposed changes although acknowledged that there is an inconsistency in the WRC which needs to be corrected. Both of these respondents expressed concern that the proposal would result in a detrimental erosion of consumer protections with one of these respondents expressing concern that a large number of customers could be affected by the proposed change. We do not expect that a large number of Non-Household Customers will be impacted by the proposed change. The restriction on back-billing will remain at approximately 16 months for the majority of Non-Household Customers. Supportive of this, although the Request for Information did not specifically ask for views on the number of Non-Household Customers which could be impacted by the proposed change, two respondents highlighted that they did not foresee a large number of Non-Household Customers being impacted as the use of Unplanned Settlement Runs will be constrained to exceptional circumstances.

Trading Parties should use the Error Rectification and Retrospective Amendments Processes provided in Code Subsidiary Document 0105 to undertake data correction prior to the Final Settlement Run or can request Corrective Settlement Runs to rectify errors in Settlement Reports. In both these instances, the restriction on back-billing will remain at approximately 16 months. Unplanned Settlement Runs (including Corrective Settlement Runs) should be used only where necessary, and only where the relevant Materiality Thresholds have been met. We consider that the Materiality Thresholds (provided in section 4.13.4 of the Market Terms), which limit the request of Post RF and Dispute Settlement Runs, will ensure that the number of Non-Household Customers exposed to receiving a back-bill for a 24 Month period is minimal.

In addition to the above, Trading Parties are currently working on data improvement plans that are focussing on improving some elements of underlying data quality (for example number of long unread meters and meter location data) which should assist in reducing the number of Unplanned Settlement Runs which are required.

The Consumer Council for Water quoted Ofwat's decision document (CPW039) which highlighted that 13% of all Supply Points in the market are currently settling on System Generated Reads (G Reads). However, the Panel highlighted in its Final Report for CPW039 that approximately 4% of all reads in the market may be of material concern, meaning that a correction may not be required which would result in a back-bill for the majority of those Supply Points or Service Components settling on G Reads. In addition, Trading Parties are currently working on data improvement plans which should assist in reducing the number of incorrect Data Items and therefore the number of Supply Points and Service Components which will settle on G Reads.

The Consumer Council for Water also expressed concern that all Non-Household Customers could be back-billed for 24 Months where an inappropriate Dispute was raised. There are a number of mechanisms in the WRC which should prevent unnecessary Disputes being raised. For example, paragraph 3.5.3 of Schedule 9 of the MAC states that the Trading Disputes Committee may resolve that a Trading Dispute is frivolous or vexatious in nature. In addition, section 4.13.5 of the Market Terms of the WRC sets out the costs of Unplanned Settlement Runs and how these will be allocated between the Trading Parties. Given this requirement for payment of Unplanned Settlement Runs, the likelihood of raising inappropriate Disputes, or indeed requesting unnecessary Unplanned Settlement Runs, is minimal.

In order to request an Unplanned Settlement Run, a Materiality Threshold must be met. In the case of a Dispute Settlement Run this relates to a specified combination of Supply Points and Service Components. A Dispute Settlement Run would therefore not result in complete recalculation of all Supply Points or Service Components in any event, but is instead limited to the relevant Supply Point(s) and/or Service Component(s) to which the Dispute Settlement Run relates meaning that the number of Non-Household Customers potentially affected by a particular Dispute between a Wholesaler and Retailer would be minimal.

In addition to the above, the Consumer Council for Water expressed concern that Retailer's may fail to communicate with affected Non-Household Customers before issuing Back-bills, meaning that Back-bills could be unexpected. We have included a question in section 2.2 of this document to request views on amending the CPCoP to include an obligation on Retailers to keep Non-Household Customers informed throughout a Dispute or a Post RF process that may result in them receiving a Back-bill.

The Wholesaler respondent that was not in support of the proposed changes agreed there was a need to address the inconsistency but considered that the proposed approach could lead to unintended consequences. It suggested that a Retailer

should only be protected against a scenario where there is no fault or blame. We agree with this. Under sections 2.2.8 and 3.2.8 of the Market Terms, Retailers and Wholesalers, as Data Owners, have a general duty to ensure that the Data Items for which they are the Data Owner are up to date, accurate and complete. Where the Data Owner itself identifies an error, it is under an obligation to correct the relevant Data Item(s) as soon as it becomes aware of the error. We expect Trading Parties to be adhering with their respective obligations within the market codes. It was also suggested by this respondent that a Retailer should be able to invoice for an extended period where it has been unable to issue an accurate bill or invoice within the required timeframe due to the fault of the Non-Household Customer. We note this point, however consideration of this falls outside of the scope of this consultation.

One Retailer respondent considered that the proposal in relation to back-billing is ambiguous and creates confusion for Non-Household Customers which may lead to complaints. It requested clarification as to whether the proposal is intending to apply only to new bills issued for the first time e.g. gap sites/missing services, or if it is intended to also apply to correction of previous bills which may have been under or over charged. We can confirm that the proposed change is intended to apply to all bills and invoices regardless of whether a bill or invoice has been issued before. We expect Retailers to be complying with their obligations under the CPCoP and ensuring that a bill or invoice is issued at least once a year.

A respondent suggested that the restriction on back-billing should only apply to Micro-businesses as is the case in other similar industries. We do not propose to amend our proposal in this respect. We are committed to maintaining a restriction on back-billing for all Non-Household Customers.

#### **8.4.2 Views of the red line changes**

Whilst three respondents did not provide a view or comment, 16 out of 19 considered that the red line changes deliver the intent of the proposed change outlined within the draft change proposal. One Retailer highlighted that it agrees with the proposed changes on the proviso that the changes are emulated in the CPCoP.

A Wholesaler respondent highlighted there is an unintended consequence of the proposed red line changes. It considers this to be that there is a 20 Month period for which Post RF Settlement Runs and Disputes can be raised but any Settlement Report provided following these could not be invoiced upon. It considers that any amendment made after the ability to bill or invoice on a Settlement Report should fall outside of the Settlement Process. As detailed in paragraph 6.1, it is not our intention to amend the timeframes within which a Dispute can be raised or Post RF

Settlement Run can be requested. We consider that Trading Parties should be able to undertake data correction and request Unplanned Settlement Runs within the timeframes currently provided in the WRC and MAC. Our intention is simply that no bills or invoices may be issued based on a Settlement Report issued if eight Months has elapsed since the Final Settlement Report has been provided.

### **8.4.3 Impact on business systems, processes and accounting**

The majority of respondents highlighted that, should the proposal be approved, there would be no or low impacts on business systems, processes and accounting. One Retailer highlighted that the inclusion of an exception to the standard approximate 16 month restriction on back-billing adds some complexity in terms of billing processes.

A Wholesaler respondent did not envisage any changes to business systems, processes and accounting apart from a prolonged period for invoicing and that it would be required to have an out of market solution for processing refunds beyond 24 months.

A Retailer highlighted that the proposal will impact its accounting practices and may have additional resource requirements in business areas such as settlements and customer services and complaints. It was suggested that consideration should be given to the implementation date for this proposal due to the amendments which will be required to be made to Terms and Conditions of Supply. We can confirm that should this proposal be approved, the implementation date will be 28 February 2019, as this is when Final Settlement Runs will recommence following deferral.

### **8.4.4 Views of whether the proposal furthers the Principles and Objectives of the WRC**

The majority of respondents agreed that the proposal better facilitates the Principles and Objectives of the WRC. A number of respondents considered that the principle of transparency is furthered as the proposal would resolve the inconsistency in the WRC. A number also considered that the principle of efficiency will be furthered with one respondent highlighting that Trading Parties would be encouraged to address errors early on in the Settlement Process which would reduce the use of Unplanned Settlement Runs.

### **8.4.5 Other views**

Three Retailers and two Wholesalers discussed the impact of the proposed changes on refunds/credit bills or invoices within their responses to the Request for Information. One Retailer expressed concern that Retailers may be required to

refund Non-Household Customers much further back than the period for which Retailers would be able to receive a refund from the Wholesaler. Another Retailer suggested that a definition of invoice should be added to the CPCoP to provide clarity to ensure that credit invoices are not limited. We have updated the drafting of our proposed changes to the WRC and CPCoP. Bills or invoices for negative sums will not be affected by our proposal which is to restrict back-billing for positive sums. This updated proposal can be viewed in section 8 of this document and the red line drafting is in Appendix 1.

In addition to our proposal to amend the CPCoP to ensure that where a Retailer receives a payment from a Wholesaler following a recalculation of Primary and Non-Primary Charges that it is required to pass this back to the relevant Non-Household Customer, we are also proposing that there should be a requirement that how these payments are treated should be included within the Retailers' Terms and Conditions of Supply.

Two Retailers expressed concern regarding the lack of industry agreed process and information available for Non-Household Customers regarding how refunds should be handled pre-market opening. This falls outside of the scope of this consultation which is primarily seeking to address the identified inconsistency within the WRC. One Wholesaler respondent requested governance be provided around the removal of System Generated Reads (G Reads), this also falls outside of the scope of this consultation, although we note that a separate Change Proposal ([CPW041 - G Read removal governance](#)) has been raised by a Trading Party.

**Key points:**

- **We do not expect that a large number of Non-Household Customers will be impacted by the proposed change**
- **The restriction on back-billing will remain at approximately 16 months for the majority of Non-Household Customers**
- **Unplanned Settlement Runs (including Corrective Settlement Runs) should be used only where necessary, and only where the relevant Materiality Thresholds have been met**
- **Corrective action, which would result in a back-bill, may not be required for the majority of Supply Points or Service Components settling on G Reads**
- **We have amended our proposal to ensure that the restriction on billing and invoicing following a Final Settlement Report is only restricted to positive sums**
- **We are seeking views on amending the CPCoP to include an obligation on Retailers to keep Non-Household Customers informed throughout a Dispute or a Post RF process that may result in them receiving a Back-bill**

## **9. Assessment of proposal against the relevant Code Principles and Objectives and the Authority’s statutory duties**

### **9.1 Wholesale Retail Code**

We set out below our assessment of how the principles and objectives of the WRC will be affected by the changes we have proposed to address the inconsistency in the WRC.

#### **9.1.1 Wholesale Retail Code Objectives and Principles**

##### **Efficiency**

The resolution of the inconsistency regarding invoicing on a Settlement Report provided following a Dispute or a Post RF Settlement Report should incentivise Trading Parties to identify and address errors in Settlement Reports at the earliest opportunity. This in turn should assist in reducing the number of Unplanned Settlement Runs requested.

##### **Proportionality**

The proposed change is proportionate to address the identified inconsistency whilst maintaining the mechanisms to allow for invoicing for a limited time period following the issue of a Settlement Report following a Dispute or a Post RF Settlement Report.

##### **Transparency**

Addressing the inconsistency in the WRC and aligning the CPCoP with the proposed modifications will assist in providing transparency on the circumstances in which invoices can be presented after the issue of a Settlement Report following a Dispute or a Post RF Settlement Report. By more effectively defining the settlement and invoicing windows, more certainty will be provided to Wholesalers and Retailers relating to how they are expected to undertake their duties as set out in the codes.

### **Simplicity, cost effectiveness and security**

The provision of clarity concerning the Settlement Process and restrictions on invoicing will help to ensure that the codes are as straightforward and economical as possible.

### **Barriers to entry**

The proposed change will reduce barriers to entry as potential market participants will have clarity on when and under what circumstances they would be able to invoice. It also ensures that new entrants would not be exposed to charges that they would be unable to recover from Non-Household Customers.

### **Business Terms Objectives**

Ensuring that there are clear and consistent provisions within the WRC relating to billing and invoicing will further the objectives of the Business Terms 1.2.1(i) and (ii). It will assist in establishing the rights and obligations of the parties to a Wholesale Contract for the payment of Wholesale Charges. In particular, the proposal makes provision for any related transitional, supplemental and ancillary matters.

### **Market Terms Objectives**

The proposed change furthers the Market Terms Objective 1.4.1(iii) as it enables the correction of Primary Charges.

## **9.2 Customer Protection Code of Practice**

In developing the Customer Protection Code Change Proposal we have given consideration to our wider statutory duties and the General Principles (provided in section 4 of the CPCoP). We have detailed our assessment against these below.

### **9.2.1 Statutory duties**

Under section 2 of WIA91, as amended, we must carry out most of our work as an economic regulator in the way we consider will best:

- further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition
- secure that water companies (meaning water and sewerage undertakers) properly carry out their statutory functions

- secure that water companies can (in particular through securing reasonable returns on their capital) finance the proper carrying out of their statutory functions
- secure that water supply licensees and sewerage licensees properly carry out their licensed activities and statutory functions
- further the resilience objective to secure the long-term resilience of water companies' water supply and wastewater systems as regards environmental pressures, population growth and changes in consumer behaviour; and to secure that they take steps to enable them, in the long term, to meet the need for water supplies and wastewater services to consumers.

Subject to our main duties above, we must also regulate in the way we consider will best:

- promote economy and efficiency by water companies in their work
- secure that no undue preference or discrimination is shown by water companies in fixing charges
- secure that no undue preference or discrimination is shown by water companies in relation to the provision of services by themselves or by water supply licensees or sewerage licensees
- secure that consumers' interests are protected where water companies sell land
- ensure that consumers' interests are protected in relation to any unregulated activities of water companies
- contribute to the achievement of sustainable development

We must also have regard to the principles of best regulatory practice. These include that regulatory activities should be transparent, accountable, proportionate, consistent and targeted.

We consider that the proposed changes to the CPCoP comply with our statutory duties.

The interests of Non-Household Customers must be protected, which is why the restriction on back-billing will remain at approximately 16 months in ordinary circumstances, except where a Settlement Report following a Dispute or Post RF Settlement Report under the WRC has been provided within a restricted timeframe.

Equivalent billing conditions in the WRC and CPCoP allows us to further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition. Our proposal ensures that Retailers will be operating within a framework that ensures they are able to recover charges for the

services that have been provided. By avoiding exposure to charges they cannot recover, Retailers will be in a better position so as to carry out their functions, which is important to the functioning of an effective, competitive market. If the WRC is to allow for the rectification of errors and Disputes following the issue of the Final Settlement Report, we consider that Retailers must have the ability to pass this through to Non-Household Customers to ensure that they can continue to operate efficiently.

If we did not make a consequential change to the CPCoP in line with any change made to the Market Terms, this could potentially leave Retailers exposed to charges which they would be unable to recover from Non-Household Customers and lead to market exit. The resultant costs of exiting Retailers would ultimately be borne by Non-Household Customers. Further, exiting Retailers would reduce the benefits of the competitive market as the competitive pressure on wholesalers may be reduced and Non-Household Customers would have a decreased number of Retailer's to choose from.

Our proposal strikes a balance between permitting recalculation of charges where concerns are raised about the Final Settlement Report and providing Non-Household Customers with appropriate protection against back-billing.

In relation to the proposed change to the definition of Back-bill and Reasonable Repayment Plan for a Back-Bill, alignment of these definitions with the proposed 24 month restriction on back-billing ensures adequate protection for Micro-businesses should a back-bill be received.

The proposal to extend the requirement that a final bill is issued within six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply to all Non-Household customers is in line with our statutory duties. It is intended to further the consumer objective. It will achieve this by offering all Non-Household Customers certainty as to the date by which they will receive a final bill from the Outgoing Retailer. Extending this provision relating to the requirement to issue a final bill will also promote Retailer efficiency as there is a requirement that the final bill is provided within a specified timeframe.

Inclusion of a provision requiring Retailers to pass back a credit and/or refund received from the Wholesaler to the relevant Non-Household Customer furthers the consumer objective and protects the interests of consumers.

## 9.2.2 CPCoP General Principles

### **Retailers shall be fair, transparent and honest; while putting the customer at the heart of their business**

The proposed change to the CPCoP maintains the current restriction on back-billing except in limited circumstances where there has been a material error in a Settlement Report. Enabling invoicing following provision of the Final Settlement Report, in these limited circumstances, ensures that Retailers are not left exposed to charges incurred by a Non-Household Customer which they are then unable to recover from that Non-Household Customer. This supports the Retailer's ability to finance its functions as it will limit circumstances arising in which a Retailer will need to pay Primary Charges that it is unable to recover. As such it can continue putting its portfolio of Non-Household Customers at the heart of its business.

The proposed amendment to the definition of Back-bill and the definition of Reasonable Repayment Plan for a Back-bill, furthers the principle that Retailers should operate fairly. Aligning the definitions with the proposed 24 month overall restriction on back-billing will enable Micro-businesses to request a Reasonable Repayment Plan for a Back-bill for the entire period for which a back-bill could be received.

The proposed extension of the requirement to issue a final bill within six weeks to benefit all Non-Household Customers also furthers the principle that a Retailer should be being fair, honest and transparent. It ensures that customers are put at the heart of the Retailers' business by affording all Non-Household Customers the benefit of a final bill within a six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply.

The proposed addition of a provision ensuring that Retailers payments received from Wholesalers to the relevant Non-Household Customers ensures the expectation that Retailers are acting in a fair, transparent and honest manner whilst putting Non-Household Customers at the heart of their business is clear in respect of such payments.

### **Retailers shall ensure they provide appropriate and timely information to Non-Household Customers to enable them to make informed choices**

Extending the period in which a Micro-business is able to arrange a Reasonable Repayment Plan for a Back-bill up to a maximum of 24 months will give Micro-businesses more choice in discussions with their Retailer about an appropriate

repayment plan for them and will enable Retailers to provide them with appropriate information about the options for repayment over an extended period.

The inclusion of a provision requiring Retailers to include within its Terms and Conditions of Supply information as to how it will make credits and/or refunds where appropriate furthers this principle. It ensures that Non-Household Customers are provided with easily accessible information regarding how the Retailer will process credits and/or refunds.

**Any information provided to Non-Household Customers shall be complete, accurate and not misleading**

Amending the restriction on back-billing furthers this principle as it will allow for the correction of invoices and bills in limited circumstances, which will assist in ensuring that all Non-Household Customers receive accurate bills from Retailers going forward.

The addition of a provision in the CPCoP requiring Retailers to pass payments on to Non-Household Customers where there has been a recalculation of Primary Charges and a payment is made by the Wholesaler to the Retailer, furthers this principle. It will assist in ensuring that Non-Household Customers are provided with accurate and complete information about any payments the Retailer is required to make where a payment has been made to it by the wholesaler following a recalculation of Primary Charges.

**Customer service arrangements and processes shall be accessible to and effective for Non-Household Customers**

The proposed modification to the definitions of 'Back-bill' and 'Reasonable Repayment Plan for a Back-bill', aims to assist Retailers to ensure that they can provide effective and accessible arrangements for Micro-businesses when they receive a back-bill, should they wish to negotiate an extended timeframe for its repayment.

The proposal to extend the provision requiring a Retailer to have issued a final bill to all Non-Household Customers within six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply furthers this principle. Clarity will be afforded to all Non-Household Customers as to the requirements on Retailers for issuing a final bill in these circumstances.

The proposed addition of a provision requiring Retailers to pass on payments received from Wholesalers to the relevant Non-Household Customers following a recalculation of Primary Charges also furthers this principle. Whilst how a Retailer chooses to pass back

any such payment may differ, there will be an effective customer service arrangement in place to ensure that it does pass the payment back where it is required to do so.

## 10. Next steps

This consultation will close on **5 December 2018**, section 2 of this document details how to respond. We will consider the responses to this consultation prior to raising the WRC Change Proposal and when deciding what proposed decisions will be consulted on for the Customer Protection Code Change Proposals. We will consult separately under section 5.2.2 of the CPCoP on the proposed decisions for the consequential change to the CPCoP (section 8.2 of this document) and the proposed decision relating to the additional changes to the CPCoP (section 8.3 of this document).

We intend to have the decision on both the WRC Change Proposal and Customer Protection Code Change Proposal (regarding the restriction on back-billing detailed in section 8.2) published by 28 February 2019. This will enable certainty in the market regarding invoicing following the issue of the Final Settlement Report prior to the first Final Settlement Run of the live market being completed. We intend to make our decision on the additional changes we have proposed to the CPCoP (section 8.3) at a later date as these are not considered to be urgent.

The indicative timetable for our intended next steps is included below, this may however be subject to change:

Stage	Authority Timetabled Change Proposal	Owner
Consider responses to this consultation	By week commencing 7 January 2019	Authority
Raise WRC Change Proposal	Week commencing 7 January 2019	Authority
Panel meeting	Week commencing 14 January 2019	Panel and Secretariat
Final Report provided to the Authority	18 January 2019	Secretariat
Consult on proposed CPCoP decision (consequential change – section 8.2)	18 January 2019 – 1 February 2019	Authority
Consult on proposed CPCoP decision (additional changes - section 8.3)	18 January 2019 – 15 February 2019	Authority
Publish final decision	By 28 February 2019	Authority

## Appendix 1. Proposed Legal Drafting

### WRC proposed legal drafting

#### The Market Terms

Delete section 4.14.8

#### The Business Terms

Insert cross reference to new section 9.3.10 into section 9.3.9 to read:

“Subject to **Section 9.3.10 and** Section 9.5.3, the Contracting Wholesaler shall invoice the Contracting Retailer the Balances in conjunction with the statements referred to in Sections 9.3.1 and 9.3.5 (inclusive) and in accordance with its published invoicing calendar, but in any event within ten (10) Business Days of receiving each Settlement Report (whether for a Planned Settlement Run or an Unplanned Settlement Run) from the Market Operator and the Balance shown on such invoice shall be paid within fifteen (15) days after the date that the statement from the Contracting Wholesaler is received by the Contracting Retailer in accordance with Section 9.6”.

Insert new section 9.3.10 as follows:

The Contracting Wholesaler shall not bill or invoice the Contracting Retailer for, or recover charges in respect of, water supplied or sewerage services provided to that Contracting Retailer’s Non-Household Customer for any Invoice Period for which a Final Settlement Report has been provided by the Market Operator unless the following circumstances apply:

- (a) the bill or invoice is for a negative sum; or
- (b) where:
  - i. the Market Operator has issued a Settlement Report carried out following a Dispute or a Post RF Settlement Report;
  - ii. the bill or invoice is in accordance with the Settlement Report carried out following a Dispute or a Post RF Settlement Report; and
  - iii. the bill or invoice is issued within the eight (8) Month period following the issuing of the Final Settlement Report.

## CPCoP proposed legal drafting – inconsistency rectification

Section 1, Definitions and interpretation is amended to include the following definitions:

WRC Dispute	has the same meaning as ‘Dispute’ in the Wholesale-Retail Code;
Invoice Period	has the meaning given in the Wholesale-Retail Code;
Month	has the meaning given in the Wholesale-Retail Code;
Post RF Settlement Report	has the meaning given in the Wholesale-Retail Code;
Settlement Report	has the meaning given in the Wholesale-Retail Code;
Unplanned Settlement Report	means a Settlement Report carried out following a WRC Dispute or a Post RF Settlement Report;

As a consequence, the definition of ‘Reasonable Repayment Plan for an Outstanding Debt’ will be amended to take account of the new definition of ‘Month’, as follows:

Reasonable Repayment Plan for an Outstanding Debt	<p>means a process for repayment of an Outstanding Debt pursuant to Section 7.1.4 which offers the relevant Non-Household Customer time to pay that amount by agreed instalments, over a period nominated by the Non-Household Customer being no longer than:</p> <ul style="list-style-type: none"> <li>(i) The period which the debt accrued, if it accrued over a period of less than 12 <del>Months</del>Months; or</li> <li>(ii) 12 <del>Months</del>Months, in any other case;</li> </ul>
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Section 9.3.1 is deleted and replaced as follows:

Retailers shall not bill or invoice a Non-Household Customer for or recover charges in respect of water supplied or sewerage services provided to that Non-Household

Customer for any Invoice Period for which a Final Settlement Report has been provided by the Market Operator unless the following circumstances apply:

- (c) the bill or invoice is for a negative sum; or
- (d) where:
  - i. the Market Operator has issued an Unplanned Settlement Report in respect of the relevant Invoice Period;
  - ii. the bill or invoice is in accordance with the Unplanned Settlement Report; and
  - iii. the bill or invoice is issued within the eight (8) Month period following the issuing of the Final Settlement Report.

## **CPCoP proposed legal drafting – additional amendments**

### **Payments**

Section 1, Definitions and interpretation is amended to include the following definitions:

Non-Primary Charge	has the meaning given in the Wholesale-Retail Code
Primary Charge	has the meaning given in the Wholesale-Retail Code
Wholesaler	has the same meaning as Contracting Wholesaler given in the Wholesale-Retail Code

Include a revised paragraph 7.1.3 as detailed below and amend subsequent paragraph numbering as appropriate:

### **7.1 Provision of information to Non-Household Customers about Terms and Conditions of Supply.**

7.1.1 Retailers shall be transparent with their Non-Household Customers about the Terms and Conditions of Supply which apply to them and any proposed changes to those Terms and Conditions of Supply.

7.1.2 Where Terms and Conditions of Supply are in writing, Retailers shall ensure they are in plain and clear language.

**7.1.3** The Retailer must include in the Terms and Conditions of Supply details of how it will comply with the obligation in paragraph 9.3.3 to pass on any payment from a Wholesaler to the Retailer following a recalculation of the Primary Charge or Non-Primary Charge;

**7.1.4** If the Terms and Conditions of Supply are due to expire, Retailers must write to the relevant Non-Household Customer at least 30 calendar days prior to the expiry date advising them of the following:

- (a) the upcoming expiry of the Terms and Conditions of Supply and the expiry date;
- (b) whether the Non-Household Customer can renew the Terms and Conditions of Supply on the same basis and, if so, how;
- (c) other Terms and Conditions of Supply available from the same Retailer (if any), in particular the Retailer's current charges and whether the Non-Household Customer is on the Retailer's cheapest deal available for that Non-Household Customer;
- (d) that the Non-Household Customer will be moved onto a Scheme of Terms and Conditions (if the Non-Household Customer is in a retail exit area) or the Retailer's standard, general or default Terms and Conditions of Supply (if the Non-Household Customer is not in a retail exit area) if the Non-Household Customer does not respond to the Renewal Notice;
- (e) the Minimum Information Requirements;
- (f) if the Non-Household Customer is in a retail exit area, that the Authority can direct a Licensee other than the Non-Household Customer's current Retailer to supply them on the terms contained in a Scheme of Terms and Conditions; and
- (g) if the Non-Household Customer is not in a retail exit area, that a relevant undertaker may provide Terms and Conditions of Supply.

**7.1.5** Retailers shall inform their Non-Household Customers of their right to raise a formal dispute with them in relation to sums due under the relevant Terms and Conditions of Supply, how to do so, the deadline by which such a dispute must be raised, whether a Reasonable Repayment Plan for an

Outstanding Debt is available and the consequences of failing to pay or raise such a dispute, in particular that the Retailer may submit a Cancellation Request in certain circumstances.

Amend the title of Section 9.3 to ‘**Retrospective Amendments**’ and insert new paragraph 9.3.3 as detailed below<sup>2</sup>:

9.3.1 Retailers shall not bill or invoice a Non-Household Customer for or recover charges in respect of water supplied or sewerage services provided to that Non-Household Customer for any Invoice Period for which a Final Settlement Report has been provided by the Market Operator unless the following circumstances apply:

- (a) the bill or invoice is for a negative sum; or
- (b)
  - i. the Market Operator has issued an Unplanned Settlement Report in respect of the relevant Invoice Period;
  - ii. the bill or invoice is in accordance with the Unplanned Settlement Report; and
  - iii. the bill or invoice is issued within the eight (8) Month period following the issuing of the Final Settlement Report.

9.3.2 Retailers shall offer a Micro-business a Reasonable Repayment Plan for a Back-bill.

9.3.3 Where the Retailer receives a payment from the Wholesaler following a recalculation of a Primary Charge or a Non-Primary Charge the Retailer is obliged to pass on this payment on to all Non-Household Customers in the same proportion to which the recalculation has affected their invoices or bill.

### **Amending the definition of back-bill and Reasonable Repayment Plan for a Back-bill**

Section 1, Definitions and interpretation is amended as follows:

Back-bill	means a bill or invoice for water supplied and/or services provided prior to the <del>24</del> <sup>12</sup> Months preceding the date of the bill or invoice
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<sup>2</sup> Drafting of paragraph 9.3 detailed reflects the proposed change to paragraph 9.3.1

<p>Reasonable Repayment Plan for a Back-bill</p>	<p>means a process for repayment of a Back-bill which meets the following criteria pursuant to Section 9.3.2:</p> <ul style="list-style-type: none"><li>(a) it does not incur interest on the amount due;</li><li>(b) it offers the relevant Non-Household Customer time to pay that amount by agreed instalments, over a period nominated by the Non-Household Customer being no longer than:<ul style="list-style-type: none"><li>(i) the period during which the debt accrued, if it accrued over a period of less than <del>12</del><b>24</b> <del>Months</del>;</li><li>(ii) <del>12</del><b>24</b> <del>Months</del>, in any other case.</li></ul></li></ul>
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### Issue of a final bill

The following modification would made to section 9.2.3 of the CPCoP:

“Any final bill to be issued to a **Non-Household Customer** ~~Micro-business~~ shall be issued within six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply.”

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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