

September 2020

Interim Supply: Decision on process amendments

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1. About this document

The Water Industry Act 1991 (**the 1991 Act**) establishes the legal framework for protecting customers in the event that a Retailer (Licensee) makes an unplanned exit from the business retail market, for example prompted by insolvency. Under these interim supply arrangements, Ofwat is responsible for reallocating Interim Duty Supply Points (IDSPs) of Affected Customers' premises to an alternative Retailer (an Interim Licensee) without undue delay. As part of this, Ofwat has an obligation to, from time to time, review and if appropriate revise, the Interim Supply Code (**ISC**)¹. The arrangements set out in the ISC are supported by mechanisms in the Wholesale Retail Code (**WRC**)², and together these codes provide for the Allocation of Affected Customers to an Interim Licensee, and set out the roles of Ofwat and the market operator, MOSL.

This document sets out our decisions following our recent consultation on proposed [interim supply process amendments](#), and recommendations from the [Panel on CPW102 and CPM032](#)³. The consultation set out Ofwat and MOSL's proposed changes to the ISC, the WRC and consequential amendments to the [Market Arrangements Code \(MAC\)](#). Our decisions and reasons for our decisions can be found in section 3. Ofwat has now decided to approve the proposed amendments to the WRC and MAC, and has amended the ISC, with minor modifications, in accordance with the proposals set out in our consultation.

This document is structured as follows:

Section 2: Sets out background information about interim supply and the proposed amendments.

Section 3: Details information about our consultation on proposed changes to the ISC, WRC and a consequential proposed amendment to the MAC. This

¹ The 1991 Act makes separate provisions for a code for interim supply for water and a code for interim provision of sewerage services. Ofwat issued a single document (the Interim Supply Code) combining both codes, and therefore references to the Interim Supply Code or ISC throughout this document should be read accordingly.

² Specifically the Market Terms and Code Subsidiary Document ('**CSD**') 0004

³ The Change Proposals sent to Panel were not identical to the proposals in our consultation. After considering the consultation responses we did not proceed with our proposed changes to the Business Terms which related to the automatic termination of Wholesale Contracts following Licence revocation. In addition, six minor amendments were made to various parts of the proposed drafting of the WRC to correct typographical errors.

section also sets out responses that we received to the consultation, our view of these, the Panel recommendation (relating to the WRC and MAC proposals) and our final decision in respect of each proposed amendment.

Section 4: Sets out our next steps and our decision on the implementation date.

Unless otherwise specified, words and expressions used in this document are as defined in the ISC, the WRC, and the MAC as appropriate. Please note that different terminology has been used in the ISC and WRC to describe the same thing, for example (in the case of interim supply) Licensee (ISC) and Retailer (WRC); and Election (ISC) and Opt In Retailer (WRC). The ISC uses the language set out in the 1991 Act to describe parties and actions, whilst the WRC uses language appropriate to multiple processes. We do not consider that it is practical or proportionate to align these terms, and have primarily used the definitions in the ISC throughout this document.

2. Background

It is a sign of a well-functioning, competitive market that companies enter and exit that market, as determined by market forces. An exit from a market can be planned, for example the sale of a company's customer book, or unplanned, for example if a company goes into liquidation.

As water and wastewater services are essential utilities, protections are in place in the event that a Licensee makes an unplanned exit from the business retail market so that IDSPs of Affected Customers' premises are allocated to an alternative Licensee (an Interim Licensee) without undue delay.

To date, Ofwat, with the support of MOSL, has run three interim supply events involving two Previous Licensees, AquafLOW and Tor Water. Having run these interim supply events and reviewed the ISC and relevant parts of the WRC, Ofwat and MOSL identified issues with the processes as currently set out in the ISC and WRC. Having sought views on the proposed changes to the ISC and WRC to address these issues, both through our recent consultation and the submission of Change Proposals to the industry Panel⁴, this document sets out our decision on amending the codes. As detailed in section 1 above, the 1991 Act establishes the legal framework for interim supply arrangements, and provides a number of powers and duties for Ofwat. The interim supply arrangements set out in the ISC are supported by mechanisms in the WRC, and together these codes provide for the Allocation of Affected Customers to an Interim Licensee, and set out the roles of Ofwat and MOSL.

Together, the ISC and the WRC provide details of how Licensees are able to Elect⁵ to be Eligible Licensees⁶, meaning that they are included on the List of Eligible Licensees and therefore may be considered to become Interim Licensees in the event that another Licensee exits the market in an unplanned way, and how to Suspend that Election where the Eligible Licensee does not want to participate in a particular event. The ISC also sets out two processes that Ofwat can use to Allocate

⁴ In relation to proposed changes to the WRC and MAC only. Amendments to the ISC are dealt with under a separate procedure. Information about the governance arrangements for amendment to the ISC and the WRC and MAC is set out in our consultation document.

⁵ Described as 'opt in' under the WRC

⁶ Acquiring Licensees (as defined at Regulation 6 of the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016) and Licensees with a special condition to their Licensee are required to Elect to be Eligible Licensees.

Customers to an Interim Licensee: Interim Supply Offers (**Offers**) and Interim Supplier Allocation (**Allocator**).

We consulted on proposed amendments to:

- The Election process;
- Statements of Interim Supply Capacity (**SISC**), including the content, and how they should be provided;
- The Offers process to give Ofwat discretion to Allocate IDSPs in an individual Area to more than one Eligible Licensee;
- CSD 0004 of the WRC to reflect that there are two processes which can be used to Allocate IDSPs to an Eligible Licensee;
- The Interim Supplier Allocation Methodology, clarifying that this process only applies to the Allocator process, and to enable MOSL to take SISC into account when Allocating IDSPs under the Allocator process ;
- The setting of the timetable for the Allocator process;
- The automation of the termination of Wholesale Contracts where a Licensee's Licence is revoked;
- The provision of information to customers following an interim supply event; and
- Other miscellaneous proposed changes.

We also sought views on:

- The right of Affected Customers to switch away from an Interim Licensee and whether this may be having a detrimental effect on Interim Licensees and customers; and
- the sufficiency of timeframes for the submission of Transfer Reads following an interim supply event.

The consultation closed on 6 August 2020. We received 19 responses from seven Retailers, 11 Wholesalers and the Consumer Council for Water (**CCW**).

We assessed our proposed changes to the ISC and WRC (and consequential changes to the MAC) in light of the consultation responses.

Following our review of the consultation responses we made some amendments to our initial proposals and subsequently raised two Change Proposals (**CPW103** and **CPM032**) which were considered at the Panel meeting on 25 August 2020. The Panel agreed unanimously to recommend CPW103 and CPM032 to us for approval. Panel Members agreed that the changes would better facilitate the Objectives and

Principles, and supported the rationale and the case for change set out in the Panel's [Final Recommendation Report](#).

CPW102 and CPM032 relate to the proposed amendments to the WRC (and consequential changes to the MAC), but not amendments to the ISC. We discuss the latter in the next section.

3. Consultation and decision on amendments to the codes

3.1 Amendments to Election Process

Both the ISC and CSD 0004 provide for how Licensees can amend their interim supply opted in status. Licensees are currently required by the ISC to send notifications to both Ofwat and MOSL to Elect to be an Eligible Licensee, or remove⁷ or Suspend their Election. CSD 0004 prescribes the details of the notification which must be sent to MOSL, whilst the ISC provides the requirements for notifying Ofwat. These must include:

- a SISC; and
- within a reasonable time of Electing to be an Eligible Licensee, a link to and a copy of the Scheme of Terms and Conditions that the Eligible Licensee will place Affected Customers on should they become the Interim Licensee (**Scheme**).

The 1991 Act specifies that the ISC should provide for the arrangements under which Ofwat exercises its interim supply powers, including those relating to Election and Suspension and registration of Elections. However, to enable Licensee Election, or otherwise, to be recorded in CMOS these processes also need to sit within the WRC.

Consultation proposals

To simplify and ensure that the two processes are more closely aligned, clearer and more transparent we proposed the following amendments:

- within the ISC clarify that a Licensee may Elect to be an Eligible Licensee following a Relevant Cessation of Supply (as well as prior to a Relevant Cessation of Supply). This amendment to the ISC supports the latest CMOS update, which occurred in August 2020.
- codify (by inserting new paragraph 5.3 in the ISC and 3.2 in CSD 0004) the informal process that MOSL and Ofwat currently undertake to inform Licensees that an interim supply event is imminent, and that Licensees who have not already Elected to be Eligible Licensees should do so to ensure that

⁷ Described as 'opt out' under the WRC

they are part of the process. This will provide Licensees that are not already Eligible Licensees with the opportunity to Elect to be so ahead of an interim supply event. By informing Licensees that an event is imminent, it will provide them with some additional time to research the relevant Supply Points and consider whether they would be able to provide interim supply to the Affected Customers;

- remove reference in the ISC to what is required within the notification to MOSL to Elect or remove the Election, as this duplicated what it in the WRC. The ISC already requires notification to be made “in accordance with the WRC”;
- amend the notification requirements for temporary Suspension of Election so that this will occur at the beginning of the interim supply process, and by reference to the Notice of Relevant Cessation of Supply. The separate reference to Suspension within the Allocator process, and MOSL’s responsibilities associated with this, will be removed; and
- include in the CSD a cross reference to the requirements in the ISC to send a SISC and Scheme to Ofwat when Electing or removing its Election.

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC either in terms of our reasons for the change or the legal drafting?

- a. To enable the backdating of Election following a Relevant Cessation of Supply?
- b. To codify the informal process that Ofwat and MOSL have in place to inform Licensees that an interim supply event is imminent?
- c. To highlight in CSD 0004 the obligations on Licensees to provide a Scheme and SISC to Ofwat in the specified circumstances.
- d. To align the Suspension process within the ISC and WRC.

Consultation responses and our view

Question 1a:

All respondents were supportive of the proposed amendments to enable the backdating of Election following a Relevant Cessation of Supply. One Retailer said that if this change is implemented, Licensees that are already ‘opted in’ should have the option to ‘opt out’ post cessation.

We acknowledge this comment, however Retailers who have Elected can Suspend for each event therefore there is already an option post cessation for Retailers to choose not to take part in the particular interim supply event.

CCW agreed with the proposed amendment but argued that it will be important that a reasonable period of time is maintained to allow scrutiny of Licensees' proposed terms and conditions before an opt in is granted. CCW said that they would welcome assurances from Ofwat that this oversight is not going to be compromised by this proposal.

We can confirm that the scrutiny of a Licensee's Schemes forms part of the interim supply process. The enabling of the backdating of Election will not affect this. Additionally, Ofwat has wide reaching powers under the 1991 Act to direct a Licensee to modify its Scheme as specified in the direction, either generally to the terms and conditions, or specifically for any particular case.

One Wholesaler, whilst supporting the proposed amendments, considered that further clarity would be useful to deal specifically with any differences that may exist between Eligible Licensees and 'acquiring licensees'⁸ under the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016 (**the Exit Regulations**), citing in particular, Regulation 43, which deals with the requirements on Ofwat to maintain a list of eligible water supply licensees. This respondent asked what interpretation has been adopted for the purpose of the ISC in respect of any opt-out of 'acquiring licensees', and if the position is different in the case of temporary Suspension.

The requirements under Regulation 43 does not apply to interim supply; instead this is dealt with through conditions imposed by the Secretary of State on acquisition of customers on retail exit under Regulation 11, by which the Secretary of State made it a condition of acquisition that 'acquiring licensees' Elected to be an Eligible Licensee for the purposes of Interim Supply.

Question 1b:

All respondents agreed with the proposed amendment.

One Retailer suggested that more Licensees might be encouraged to opt in if more information could be included in the information notice in section 5.3.2 of the ISC (section 3.2.2 of CSD 0004). They said that ideally this would include the anticipated

⁸ See definition within the Exit Regulations. In some instances, a special condition to a water supply and sewerage licence will have also imposed an obligation on a Licensee to act as 'acquiring licensee'.

number of IDSPs, in which Wholesale Areas they are located and, as much further detail as is available.

We do not consider that an amendment is required to the proposal because the list that is provided in section 5.3.2 of the ISC and section 3.2 of CSD 0004 is not exhaustive. Additional information could therefore be included in the notice without a requirement for the proposal to be amended. Licensees also have access to CMOS which they are able to use to view the IDSPs to gather additional information.

A Wholesaler commented that it is important to give early notice to Wholesalers of an interim supply event to achieve the short turnaround required for a new Wholesale Contract(s) with new or potentially Eligible Licensees, or whether current processes are believed to be adequate.

We consider that the point made about giving time for Wholesalers to prepare for an interim supply event is valid. The proposed process could be improved by extending the requirement on MOSL to also inform Wholesalers. Although we consider that Licensees would approach Wholesalers where they consider that a new Wholesale Contract is required, giving Wholesalers more notice that this may occur will enable Wholesalers to ensure they have adequate resources in place to accommodate this. As such, prior to submitting the Change Proposal to the Panel, we amended the proposed drafting of CSD 0004, new paragraph 3.2, of the WRC to make reference to this. A corresponding change has also been made to section 5.3 of the ISC, the revised drafting can be found in our decision section below.

Question 1c:

All respondents agreed with the proposed amendments.

One Wholesaler suggested a proposed amendment to the drafting of section 2.1.3(d) which only requires Retailers to confirm that they "have met or will be meeting the requirement to provide and publish a Scheme". This Wholesaler recommended a timeframe should be introduced for provision of the Scheme to ensure that there are no delays in the process.

We acknowledge this comment; however, the requirement that the Scheme must be provided within a reasonable time is set out in the 1991 Act. Therefore no amendments have been made to the drafting of this section.

Question 1d:

All respondents supported aligning the Suspension process within the ISC and the WRC. It was considered by one respondent that this was important to avoid confusion and another thought that the change improved efficiency.

Our decision

The consultation responses overwhelmingly supported our proposals. We consider that these amendments will improve the efficiency of the process and could help to encourage more Licensees to Elect at the time of an interim supply event. This could ultimately result in better outcomes for customers as the pool of potential Interim Licensees may increase. We have therefore decided to approve the amendments to the Election process, with some amendments to the drafting of the ISC, as detailed below.

Prior to submitting the Change Proposal to the Panel we had made two minor amendments to the drafting of new paragraph 3.2 of CSD 0004:

- A change to provide that information notices should also be sent to Wholesalers; and
- Due to responses in other areas of the consultation on timetabling and to ensure that the interim supply process is commenced at the earliest opportunity, we made an amendment to the drafting to clarify that the date and time by which a Licensee must Elect must be approved by Ofwat.

We have decided to make equivalent amendments to the drafting of new section 5.3 of the ISC. This section will now also make reference to undertakers ('Wholesaler' is not a term used with the ISC), and the requirement of approval from Ofwat on date and time for Election, so that section 5.3 now reads:

- 5.3.1 Following the Relevant Cessation of Supply, the Authority shall instruct the Market Operator to issue a notice to all Licensees and undertakers informing them that a Relevant Cessation of Supply has occurred in accordance with the relevant provisions of the Wholesale-Retail Code.
- 5.3.2 This information notice shall include, but need not be limited to:
- (a) the Date of Cessation of Supply (which may be in the future);
 - (b) the name of the Previous Licensee; and
 - (c) where Licensee is not already an Eligible Licensee, the date and time, as approved by the Authority, by which it would need to Elect to be an Eligible Licensee to be part of the relevant allocation exercise.

3.2 Statement of Interim Supply Capacity

Eligible Licensees submit a SISC to inform Ofwat of their capacity to take on IDSPs in specified Areas and Service Categories. The SISC requires Eligible Licensees to provide assurance to Ofwat that they are financially and operationally capable of taking on IDSPs and Ofwat currently uses this data to inform its Offers process.

Consultation proposals

An Eligible Licensee must confirm that it is able to finance the additional cost of taking on the number of IDSPs it has indicated it has capacity to deal with, including costs related to any additional credit support. It was proposed that the ISC was updated to include reference to 'Alternative Credit Support', which was introduced as an additional credit support option following implementation of [CPW019](#).

Following the implementation of [CPW048](#) Trading Parties are able to agree Alternative Payment Terms. It was proposed that the SISC should also include an assurance from Eligible Licensees that any Alternative Payment Terms that they have agreed with a relevant Wholesaler will not be adversely affected by the increase in IDSPs for which they claim capacity.

Finally, we proposed aligning the submission processes in the ISC and CSD 0004 so that SISC only need to be submitted under CSD 0006, rather than a separate notification to Ofwat and MOSL.

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC, either in terms of our reasons for the changes or the legal drafting?

- a. To insert reference to Alternative Credit Support and Alternative Payment Terms into the SISC?
- b. To amend the manner in which SISCs are submitted so that they are provided by reference to CSD 0006 rather than directly to an Ofwat inbox.

Consultation responses and our views

All respondents were supportive of the proposed changes, with one Retailer providing no comments. Respondents noted that the proposed changes better align the ISC and WRC, improving efficiency, consistency, transparency and clarity of the interim supply process.

Question 2a

One Retailer noted that it is logical to include reference to all credit support and payment terms options in the SISC, both for removing limitations but also providing improved transparency.

CCW noted that, as the ISC currently does not refer to Alternative Eligible Credit Support being an option, it considered that this may be discouraging prospective Eligible Licensees from Electing, and is not consistent with the provisions of CPW019.

The SISC is an assurance statement provided by Eligible Licensees to Ofwat that they would be able to provide the requisite services to Affected Customers should a Licensee unexpectedly leave the market; it does not provide or restrict the types of credit support that are available for use by Interim Licensees.

While supportive of the insertion of a reference to Alternative Payment Terms, CCW noted that it may be inappropriate to mandate that existing terms are unaffected by the on-boarding of new customers. As a result of a potentially large change in the number of Supply Points/customer numbers, CCW highlighted that Eligible Licensees should be prepared to potentially adapt to new payment arrangements that are more suited to new circumstances.

One Wholesaler suggested amendments to add an 'agreement in principle' of the relevant Wholesalers to ensure sufficient time for amendments to be made to any Alternative Eligible Credit Support or Alternative Payment Terms which might have capped limits or special terms and require amendments to enable the agreements to include the additional IDSPs.

We acknowledge this comment but do not consider that it is necessary to amend paragraph 4.2.2(d) which deals with Alternative Eligible Credit Support. At the time of Election, a Licensee is required to confirm that it would be able to finance additional costs associated with the provision of Interim Supply, rather than confirm that it currently could, and therefore it is free to undertake negotiations on this at a later date. However, taking into account the points raised by both this Wholesaler and CCW we have revised the drafting of new section 4.2.2(e) to make it clearer that:

- Licensees may consider that any agreed Alternative Payment Terms would not be affected by the provision of Interim Supply, either because this has been included within the agreed terms, or the Licensee would provide Interim Supply on standard pre or post-payment terms; or

- Where they would be affected, and the Licensee wanted the provision of Interim Supply to be included with the terms, it would seek to re-negotiate Alternative Payment Terms in accordance with the WRC.

Question 2b

One Retailer sought clarification on the requirements for any Licensee already opted in and if resubmission would be necessary.

We consider that, where changes to the contents of the SISC are approved, all Licensees will need to re-submit their SISC. However, Ofwat will issue further guidance on this in due course.

CCW thought that it was unclear whether submission through the CSD 0006 process would resolve Ofwat's concerns about a SISC not always being received in a timely manner. It said that the timescale for submission under CSD 0006 therefore has to be sufficient enough to allow the scrutiny needed.

The scrutiny of SISC will be unaffected by submission via CSD 0006. Amending the manner in which SISC are submitted so that they are provided by reference to CSD 0006 rather than directly to an Ofwat inbox will simplify the process overall by reducing the number of places that Licensees are required to submit documents, or confirmation, too.

Our decision

We have decided to approve the proposed amendments to insert reference to Alternative Eligible Credit Support and Alternative Payment Terms into the SISC and to amend the manner in which SISC are submitted so that they are provided by reference to CSD 0006. Including reference to Alternative Eligible Credit Support and Alternative Payment Terms in the SISC will improve clarity by ensuring that the SISC is aligned with the WRC.

Taking account of responses we have decided that new section 4.2.2(e) of the ISC will read as follows:

'confirmation that, where the Eligible Licensee has agreed Alternative Payment Terms with an undertaker, that the provision of Interim Supply to the maximum number of additional Supply Points indicated above:

- (i) would not adversely affect the agreed Alternative Payment Terms, or

(ii) where they would be affected, the Licensee would seek to re-negotiate its Alternative Payment Terms in accordance with the Wholesale-Retail Code.'

Amending the manner in which SISCs are submitted will improve the efficiency of the process of overall as it removes the need for a separate email to be sent in addition to the process that must be completed in Kissflow. This amendment will also ensure that MOSL is able to access and view the SISCs which is required following our decision to approve the change to incorporate use of SISCs where the Allocator method has been selected (see section 3.5).

3.3 Offers process: enabling Areas to be split across different Eligible Licensees

Currently, the Offers process in the ISC only allows Ofwat to Allocate IDSPs in an Area, or a combination of Areas, to one Eligible Licensee. It does not enable Ofwat to split IDSPs within one Area between multiple Eligible Licensees.

Consultation proposals

We proposed that Ofwat would be given discretion, if it thinks appropriate, to split IDSPs in one Area, or a relevant combination of Areas, between multiple Eligible Licensees thereby enabling Ofwat to consider allocating IDSPs by criteria other than simply Area, such as, by type of Affected Customer or retail service. This change would also enable Offers from Eligible Licensees that would not previously have been able to bid because they were restricted by the number of IDSPs they were able to take on.

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC, either in terms of our reasons for the changes or the legal drafting?

- a. To give Ofwat the discretion to determine whether IDSPs in one Area, or a relevant combination of Areas, should be Allocated to more than one Eligible Licensee?

Consultation responses and our views

Question 3a:

17 respondents, including CCW, were supportive of the proposed changes to give Ofwat discretion to determine whether IDSPs should be Allocated to one or more Eligible Licensee. CCW considered that the proposed changes would enable a more tailored allocation service, to the benefit of customers, and that by splitting the number of IDSPs, this may increase the number of Licensees Electing into the process. A Retailer also considered that this approach may encourage more opt-ins, and also prevent limiting Allocation based solely on Licensee capacity, which may not be in the best interests of the customer. A Wholesaler supported the need to increase flexibility, and highlighted that in practical terms constraints within SISC might necessitate multiple allocations.

One Retailer requested further information to support the change, raising concerns that the methodology that would be used to Allocate was not explained. A Retailer raised concerns about increased administrative costs for customers where water and sewerage IDSPs are split between different Licensees. A Wholesaler, whilst supportive of the change, considered that this approach may add complexity to the offer, evaluation and allocation process.

We acknowledge these concerns but consider that allowing this flexibility will enable Ofwat to consider different ways of Allocating IDSPs depending on the particular circumstances of the interim supply event. The methodology about how Ofwat determines if, and how, to split Areas would be provided at the time of the event as this will be specific to the particular circumstances. Ofwat does not consider that splitting water and sewerage IDSPs for all interim supply events is appropriate or necessary, in the same way that it does not consider that splitting Areas would be necessary for all interim supply events, but by having this flexibility, it enables it to adapt, including by allowing those Licensees that only provide one retail service to considering bidding where the Offers route is used.

A Wholesaler was supportive of the change but commented that the Offers process should also be made available to those Eligible Licensees that had Suspended their Election for a particular event as this would provide additional flexibility.

We do not consider that this change is necessary. Eligible Licensees will be provided with information about the particular event by both MOSL (under the new notice provisions) and Ofwat (as part of the Notice of Relevant Cessation of Supply). It is at that point that an Eligible Licensee can decide whether it wants to Suspend its Election for that event. Eligible Licensees who have not Suspended their Election are entitled to receive the invitation to make an Offer from Ofwat. Having received this invitation the decision then rests with the Eligible Licensee as to whether they want to make an Offer. Where they choose not to, they would not form part of the process, and would not receive IDSPs through the Interim Supply Offers process.

Our decision

This change is designed to give Ofwat flexibility to adapt to the circumstances of a particular interim supply event, and consider how best IDSPs, and thereby Affected Customers, can be Allocated to one or more Interim Licensees. By enabling this flexibility, Eligible Licensees that would not previously have been able to bid, for example, due to constraints on the number of IDSPs they could accommodate or type of service they offer, may in future be able to bid. We have carefully considered all of the responses provided, and note that the majority of respondents were supportive of this change. Where more substantive comments have been made, these have been addressed in the section above.

In light of the responses received, and the Panel recommendation, we have decided to approve the proposed changes to the ISC and WRC.

3.4 Allocation and Registration of Licensees who have Elected to be Eligible Licensees

Currently CSD 0004 does not specify how MOSL should deal with IDSPs Allocated using the Offers process, other than by including passing reference to 'other processes'. As a result, MOSL's systems currently apply the same steps to registration for IDSPs Allocated via the Offers process as they do for those Allocated via the Allocator process.

Consultation proposals

We proposed that a new section be included in CSD 0004 that specifically details MOSL's role when the Offers process is used by Ofwat to Allocate IDSPs. The current Allocator's process would be set out in a new section in CSD 0004, and amended to remove reference to suspensions which will instead be dealt with under the ISC (details of which are discussed at section 3.1 above). Consequential amendments would be required to the Market Terms, Operational Terms, five CSDs in addition to CSD 0004, the definition of 'Interim Duty Supply Point' in the WRC, and the definition of 'Supply Point Register' in the MAC.

In addition, new process diagrams would be inserted into CSD 0004 which set out the Offers and Allocator processes in diagrammatical format.

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC, either in terms of our reasons for the changes or the legal drafting?

- a. To explicitly reference the Offers process in CSD 0004?
- b. The process diagrams for the Interim Supply Offers process and Interim Supplier Allocation Process are reflective of the proposed amendments?

Consultation responses and our views

Question 4a:

Seven of the responses from Retailers and 10 of the responses from Wholesalers were in support of the position set out in the consultation to explicitly reference the Offers process in CSD 0004. CCW also agreed with this proposal.

Respondents considered that the proposed changes added clarity. CCW suggested that the changes will increase transparency and reduce any potential ambiguity as to which processes should apply.

One Retailer suggested an addition to the modifications proposed for CSD 0004 to promote customer interests in the allocation process. It stated that customers find it costly and confusing for Supply Points to be allocated to different retailers. It is neither necessary nor efficient for either party. The proposal was that the predominant consideration should be to ensure that Supply Points are allocated on the basis of the premises, and hence the customer, to which they refer. This respondent said that the allocation principles in section 4.1.5 and the high level methodology in section 4.1.8 currently apply this principle only 'so far as is practical' (section 4.1.5) and 'As far as possible' (section 4.1.8). These qualifications should be deleted and the order of precedence adjusted so that they override the 'random' principle in section 4.1.4 and the 'equal distribution' requirement in section 4.1.9.

We acknowledge the suggested amendments. We do not think that this additional amendment is necessary as the current drafting enables the Allocation of IDSPs taking into account both customer and Retailer impacts. Previous experience of using this process has demonstrated that compliance with both limbs is possible, thereby achieving a positive outcome for the customers (with relevant IDSPs kept together) and Retailers involved. The proposal to amend the Offers process was raised to further efficiency.

One Wholesaler agreed with the proposal set out but detailed a number of drafting corrections to the referencing for CSD 0004. These related to the numbering and

minor wording corrections. We made amendments to the drafting prior to submitting the Change Proposal.

Question 4b:

Of the responses received, seven of the Retailers agreed that the process diagrams for the Offers process and Allocator process are reflective of the proposed amendments. Nine of the Wholesaler responses also supported this position.

One Wholesaler commented that whilst the process diagrams are clear there is no timeframe attached to the process and that they felt introducing a timeframe would benefit all parties, especially customers who face uncertainty about supply, deposits and outstanding charges.

Whilst we acknowledge the suggestion that a timeframe could be added to the process maps, the nature and variability of an interim supply event makes timings difficult to predict. However, we note that to improve transparency MOSL has previously provided regular progress updates on the interim supply event via the 'live update' section of their website, and we will explore ways in which Ofwat can achieve something similar for future events. As a guide, in previous events, IDSPs have been allocated to an interim supplier in approximately one week, with the Registration of the IDSPs to that Interim Licensee following this allocation process. As well as communicating about the timescale, we acknowledge that it is also important that we communicate about the scope of interim supply. General information is included on the Ofwat website (which includes that there should be no uncertainty about supply because that is the responsibility of the Wholesaler and not affected by the failure of a Licensee), and we also provided more specific information at the time of an event.

Our decision

We have decided to approve these changes. Following analysis of the responses received, a new section which specifies MOSL's role when the Offers process is used by Ofwat to allocate IDSPs will be included in CSD 0004. This will reduce ambiguity and give further clarity on the role of MOSL when dealing with the Allocation of IDSPs. Introduction of the process diagrams to provide an overview of the key steps in each process will also improve clarity around them.

3.5 Interim Supplier Allocation Methodology

Section 4 of CSD 0004 sets out the methodology which MOSL uses to Allocate IDSPs to Interim Licensees where Ofwat has decided to use the Allocator process rather than the Offers process. The methodology does not currently take account of an Eligible Licensee's SISC, which risks it receiving more IDSPs than it has said it is able to take on, to the detriment of both the Eligible Licensee and Affected Customers.

Consultation proposals

We proposed that section 4 would be amended to clarify that this process only applies to the Allocator Process (in accordance with the changes detailed in section 3.4 above). In addition, we proposed that the methodology be amended to ensure that Allocations under this process take account of SISCs.

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC, either in terms of our reasons for the changes or the legal drafting?

- a. To clarify that the methodology cited in CSD 0004 only applies to the Allocator process?
- b. That an Eligible Licensee's SISC on capacity should be taken into account under the Allocator process.

Consultation responses and our views

Question 5a:

18 out of 19 respondents supported our proposals to amend CSD 0004 to ensure it is clear that this only applies to the Allocator process.

One Wholesaler respondent said that it did not consider the addition of the words "Interim Supply Offers and" in line 2 of CSD 0004 section 4.1.1 contributes to the objective of clarifying. This respondent considered that the addition of these words could cause confusion.

We did not change our proposal in response to this comment as we did not agree that the addition of these words is unclear, also noting that other responses to the consultation did not reach this conclusion. MOSL is required to develop and maintain systems and processes to support the implementation of both the Interim Supply

Offers and Interim Supplier Allocation Process. To align with the proposed amendment to insert direct reference to the Offers process into the WRC, we concluded that the amendment to this section was required to ensure that the obligation remains applicable for both processes.

Question 5b:

All respondents supported this change and considered it to be an improvement. One Retailer respondent said that they considered that this amendment may encourage smaller Licensees to opt in as it provides assurance that they will not be overstretched.

One Retailer said that it should be ensured that any Licensees who are currently opted in are not at an unfair disadvantage. This respondent suggested that existing SISCs would need to be reviewed and resubmitted based on the new criteria. This respondent thought that the criteria are not fully defined and as such considered that it is not clear how decisions will be made.

We can confirm that we will be seeking a revised SISC from all Eligible Licensees, we will issue a separate communication about this in due course. In any event, Eligible Licensees are required to provide an up to date SISC promptly following any change in circumstances that materially affects the Eligible Licensee's capacity to provide interim supply. This could include at the time of an interim supply event.

Our decision

All responses were supportive of the proposals that CSD 0004 should be amended to clarify that the methodology cited in CSD 0004 only applies to the Allocator process and that the SISC should be taken into account under the Allocator process. The Panel has also recommended that we approve these changes.

The amendment to the WRC to ensure clarity relating to applicability of the methodology will improve the clarity of the Code. The change to provide that the SISC should be taken into account under the Allocator process will help to avoid a situation where an Eligible Licensee could be allocated more IDSPs than it has said it is able to manage effectively. We have therefore decided to approve these changes.

3.6 Timetabling for the Allocator process

Currently the ISC requires Ofwat to set the timetable for the Allocator process while CSD 0004 requires MOSL to do so, subject to Ofwat's approval.

Consultation proposals

We proposed that the ISC be amended so that it aligns with CSD 0004, enabling MOSL to set the timetable for the Allocation process, subject to Ofwat's approval. We considered that as the Allocator process is a MOSL operated process, MOSL will have a better understanding of how long it will take to Allocate the IDSPs depending on the characteristics of the particular event. However, as Ofwat has the legal obligation to ensure that all IDSPs are Allocated, it should retain approval of the timetable to ensure that Allocation is achieved as efficiently as possible to minimise customer inconvenience.

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC, either in terms of our reasons for the changes or the legal drafting?

- a. To align the obligations on MOSL and Ofwat to provide and approve a timetable for the Allocator process?

Consultation responses and our views

Question 6a:

All respondents were supportive of the proposed changes, with one Retailer providing no comments.

One Retailer added that it would expect Ofwat to challenge any perceived inefficiencies if it feels timetabling is not in the customers' best interests. One Wholesaler said that the process overall would be improved by a pre-determined timetable to minimise customer uncertainty and suggest a fixed timeframe would help all parties complete the process effectively and swiftly return certainty to the market. CCW agreed with the proposal to allow MOSL to set the timetable given its greater understanding of the time that will be required to allocate the number of Supply Points involved in an interim supply process. It notes that it would like the given timetable to be transparent.

We acknowledge the points raised above, but we did not consider that it is necessary to amend our proposal. As with previous events, we will work with MOSL to ensure that the timetable is as efficient as possible. We agree that being open to customers is important but note that circumstances around each event are different. We do not consider that a predetermined timetable is appropriate because of the nature and variability of interim supply events. However, as detailed in response to question 4b above, we will consider ways to make the timetable for future events more transparent.

Our decision

We note that all respondents to the consultation supported our proposals and the Panel has recommended that we approve these amendments.

We have decided to approve the proposed amendments to align the obligations on MOSL and Ofwat to provide and approve a timetable for the Allocator process. These amendments will remove inconsistencies between the ISC and CSD 0004 with regard to timetabling of interim supply events, this improve efficiency and clarity around the process of setting a timetable.

3.7 Cessation of supply

Previous interim supply events have highlighted potential improvements that could be made to the ISC and Business Terms of the WRC to broaden the circumstances in which interim supply can be invoked, and to clarify when Wholesale Contracts will be terminated where Ofwat revokes a Licensee's Licence.

Consultation proposals

We proposed that the definition of 'Relevant Cessation of Supply' in the ISC be amended to delete the restriction that prevents Ofwat running an interim supply event where the Licensee has consented to the revocation of their Licence. This would enable a Licensee to exit the market as quickly as possible, but ahead of corporate insolvency. Clarity would also be added to the ISC that confirms that where a Wholesale Contract termination and a Licence revocation occur at the same time, the Licence revocation would take precedence for the purposes of an interim supply event.

In addition, we proposed that an amendment be made to the Business Terms which enables the automatic termination of a Wholesale Contract where a Licensee's

Licence is revoked, as a Licensee is not legally entitled to operate in the business retail market without one.

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC, either in terms of our reasons for the changes or the legal drafting?

- a. To extend the circumstances in which Ofwat may invoke interim supply to include where a Licensee has consented to the revocation of its Licence?
- b. To clarify that revocation will take precedence over Wholesale Contract termination for the purposes of interim supply?
- c. To amend the Business Terms so that all Wholesale Contracts that a Licensee has are automatically terminated when it's Licence is revoked?

Consultation responses and our views

Question 7a:

All Retailer and Wholesaler respondents agreed with the proposals to extend the circumstances in which Ofwat may invoke interim supply to include where a Licensee has consented to the revocation of the Licence.

One Retailer stated that the amendments are appropriate and create efficiencies and clarification to the existing process.

Question 7b:

The consultation responses set out the general agreement for the proposal to clarify that revocation will take precedence over Wholesale Contract termination with six Retailers and 11 Wholesalers responding in agreement. CCW also stated that they had no concerns with the proposals as they are based on lessons learned from prior events.

One Wholesaler stated that the section is unclear as to whether a Wholesale Contract terminated by a Wholesaler, and thereby subject to an interim supply event, would be impacted by an almost simultaneous License revocation (e.g. days or a week later).

This amendment to the ISC clarifies that where a Licence revocation and Wholesale Contract termination occur at the same time, the Licence revocation will take priority, allowing Ofwat to run one single interim supply event which encompasses all

relevant Areas, and therefore enables minimal disruption to Affected Customers and Retailers. Where a Wholesale Contract is terminated by a Wholesaler (independent and ahead of the Licence revocation) then the interim supply event will only be run to reallocate Supply Points within that Area; all other Supply Points remain unaffected. The Allocation of IDSPs to the Interim Licensee are always backdated to the date of cessation of supply so that, ultimately, there is no gap in retail service. Cessation will normally occur by reference to Wholesale Contract termination or Licence revocation.

One Retailer also stated that it is unclear what is meant by 'take priority', stating that the drafting could be clearer and simpler. This respondent said that where Licence revocation is not by consent, proceedings may be on foot to contest it. They did not think that it is not clear whether and how the drafting caters for this.

As detailed above, and supported by the majority of respondents, this change is designed to establish which process would take priority where a Wholesale Contract termination occurred at the same time as the Licence revocation. This change, and the ISC itself, does not deal with the validity of the revocation or termination, both of which can only happen after notice is given that they will occur.

Question 7c:

Six Retailers were in agreement with amending the Business Terms so that all Wholesale Contracts that a Licensee has are automatically terminated when its Licence is revoked.

Ten of the Wholesaler responses set out their agreement with the proposal, with one stating that when a Licence is revoked all contracts should be automatically terminated. This would provide a uniform exit date across the whole market, as well as removing an administrative activity from Wholesalers who would need to prepare and issue contract terminations, and from MOSL who would need to ensure all contracts had been terminated and CMOS updated.

One Wholesaler agreed with the purpose of the modifications but believed that there was an unintended consequence of the proposed amendment to automatically terminate Wholesale Contracts following Licence revocation, which it considered would create additional exposure for Wholesalers. The respondent stated that deletion of 10.1.14 of the Business Terms would mean that upon termination of a Wholesale Contract, as a Licensee would no longer be classed as a Defaulting Trading Party, the Wholesaler would not be able to draw on the credit support. This is because section 9.14 requires that a Wholesaler can only enforce its rights under credit support if the Licensee is a Defaulting Trading Party. They stated that whilst a

Licensee might become a Defaulting Trading Party prior to revocation, this might not always be the case. The respondent recommended a change to the proposal so that a Licensee would continue to be a Defaulting Trading Party even if their License has been revoked.

The Wholesaler also raised several other consequences:

- In order to cover the proposed automatic termination following License revocation, section 4.3.9 of the Market Terms would require amendment. This section is assumed to apply on termination of the Wholesale Contract or in case of insolvency. However, section 4.3.9 of the Market Terms still only refers to termination by the Wholesaler. The respondent suggested that this should be amended to refer to the termination of the Wholesale Contract, irrespective of the reason for the termination.
- This respondent also suggested that provisions relating to the consequences of termination on the payment of charges and the use of credit support should be considered further, especially as termination may no longer be a decision of Wholesalers. Clause 14.1 of the Wholesale Contract includes survival provisions relating to charges and payment, billing and terms of payment and termination. However, section 9.14.2 of the Business Terms limits the right of Wholesalers to draw on Eligible Credit Support to the sums "owed and due" to the Wholesaler at the relevant time. The respondent stated that in the context of a termination of the Wholesale Contract, this is relevant to charges that where invoiced and outstanding at termination, but it does not address specifically:
 - (a) Sums that have been invoiced but are not yet payable and sums that have been ascertained (the settlement report has been run) but not yet invoiced. Termination provisions would generally provide that any sums already invoiced become immediately payable on termination and that the supplier is entitled to submit an invoice for sums (ascertained but) not yet invoiced, which shall be payable immediately on receipt. In the context of a termination event, it does not seem to be justified to require Wholesalers to delay calls on credit support in respect of sums ascertained.
 - (b) Sums that will be ascertained and invoiced post termination (the Settlement Run will occur after termination). Once the Settlement Report has been provided following termination, this respondent considers that Wholesalers should be entitled to invoice immediately and the invoice should be immediately payable. This would allow Wholesalers to use the credit support without delay if necessary.
- Section 11.6 of the Business Terms (consequence of termination) refer to section 3.4.9 of the Market Terms (and other relevant sections on possible

transfers of supply points) which does not deal specifically with issues related to invoicing and payment of charges in the context of a termination of the Wholesale Contract. This creates a lack of clarity which could have an impact on the use of credit support when it is most needed. Additional details would be beneficial.

This respondent considered that it would also be useful to confirm that Settlement Runs which take place after termination correctly reflect the timing described in the provisions (for example that the Interim Licensee takes over the IDSPs from the date of termination rather than for example, being deemed to have been Allocated to the Interim Licensee earlier than this) and that there is no need to make accounting adjustments relating to the period preceding the termination date which could be significant.

Although the majority of respondents agreed with the changes to the Business Terms, in light of the detailed concerns raised by this Wholesaler, and to ensure the avoidance of any unintended consequences, we did not include our proposals to amend the Business Terms within the Change Proposal that was submitted to the Panel. Instead we shall be considering the changes to the Business Terms further and make a decision on the points raised in this consultation in due course.

Our decision

Our objective when detailing this proposal in our consultation was to ensure that learning and improvements from previous interim supply events are incorporated to the ISC and the Business Terms of the WRC. This will allow us to broaden the circumstances in which Interim Supply can be invoked and to clarify when Wholesale Contracts will be terminated where Ofwat revokes a Licensee's Licence.

As stated in CCW's response, Ofwat and MOSL have identified aspects of the codes that could potentially cause delay or disruption to an interim supply event. By implementing these changes any supply event should run more smoothly for customers.

As detailed above, we have decided that the changes to the ISC should be implemented without amendment. We consider that amendments to the Business Terms are necessary to remove the unnecessary burden on Wholesalers to both classify a Licensee as a Defaulting Trading Party and then terminate its Wholesale Contract when it is already clear that the Licensee can no longer legally operate in the market. However, prior to bringing forward a Change Proposal on this, we will consider further the responses received to avoid any unintended consequences.

3.8 Provision of information to customers

Section 9 of the ISC outlines the information that an Interim Licensee must provide to Affected Customers once the IDSPs have been transferred and also specifies the timeframe in which this information must be provided.

Consultation proposals

We proposed that the current timeframe be amended in the ISC and Market Terms to enable it to be extended at Ofwat's discretion so that an Interim Licensee's estimation of on-boarding time may be taken into account, whilst also considering any detriment to an Affected Customer.

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC, either in terms of our reasons for the changes or the legal drafting?

- a. To enable Ofwat to extend the timeframe in which Interim Licensees must provide information to Affected Customers?

Consultation responses and our views

Question 8a:

All respondents were supportive of this change, with the majority of more substantive comments acknowledging that it is not the intention for the timeframe to be extended ordinarily, but instead flexibility would enable a different approach, as required, where a large number of IDSPs were involved. One Retailer did request clarification on what the length of an extension may be.

As detailed in the consultation document, we proposed this amendment to enable Ofwat to consider an Interim Licensee's estimation of on-boarding time, and as such any extension will depend on the particulars of the interim supply event. We agree with CCW's comments that Affected Customers need to be contacted as quickly as possible to avoid any uncertainty and that Ofwat would only consider this where the Interim Supplier has justified that an extension is required, for example due to the number of Affected Customers (and IDSPs) it has taken on.

CCW also commented that it is important that Ofwat requests information on Affected Customers from the Previous Licensee where they consider that an event is imminent.

We agree with CCW. For the previous interim supply events that have occurred, Ofwat has sought information from Previous Licensees about their customers; however, this information is not always forthcoming. We are working with MOSL on proposals that seek to address this issue.

Our decision

We have decided to approve this change. The Panel have recommended that we approve this Change Proposal and the responses received to our consultation indicate that Trading Parties and CCW see this as a positive change, giving Ofwat the flexibility to consider circumstances in which an extension of this timeframe may be necessary. We consider that an element of flexibility in the provision of information to Affected Customers is a positive change. Our view is that this change will, amongst other things, ensure that where an Interim Licensee takes on a large number of IDSPs it is able to engage with Ofwat regarding any difficulties that it might experience in providing the required information within the timeframe stated in the ISC. Although we would expect Interim Licensee(s) to provide information to Affected Customers as quickly as possible, Ofwat will be able to give consideration to the issues raised and, where appropriate, agree a different timeframe.

3.9 Other proposed changes

Additional miscellaneous amendments were consulted on.

Consultation proposals

In the ISC we proposed that:

- certain obsolete words were removed ('calendar day' and 'relevant');
- it was made clear, in section 6.3.1, that an Eligible Licensee can use the information provided in the Notice of Relevant Cessation of Supply to inform its Offer; and
- reference to 'Tariff' was removed, and replaced with 'Charges' in section 6.1.7(a).

In CSD 0004 it was proposed that alphabetical reference were amended to numerical ones to better align with drafting elsewhere in the WRC.

In the Market Terms, it was proposed that 'Opted In Retailer' be replaced with 'Interim Supplier', and 'month' be replaced with 'Month' as this makes better use of defined terms.

In the MAC, it was proposed that the definition of 'Interim Supplier Allocation Process' be deleted as this definition is not used in the MAC.

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC, either in terms of our reasons for the changes or the legal drafting?

- a. To amend reference from Wholesale Tariff to Wholesale Charges?
- b. To clarify that Eligible Licensees will be able to use information provided with the Notice of Relevant Cessation of Supply to inform the contents of their Interim Supply Offer?
- c. To make minor drafting changes to CSD 0004 and the MAC?

Consultation responses and our views

Question 9a:

All of the consultation responses agreed with the proposal to amend reference from Wholesale Tariff to Wholesale Charges.

Question 9b:

All responses were in agreement with the proposed drafting to clarify that Eligible Licensees will be able to use information provided with the notice of relevant cessation of supply to inform their interim supply offer.

Question 9c:

All responses were in agreement with the minor drafting proposed to CSD 0004 and the MAC. One Retailer and CCW did not comment on this question.

Our decision

Section 4.9 of the consultation set out minor amendments and miscellaneous changes to the ISC, WRC and MAC. Based on the responses received, our decision is to amend the codes as proposed: we consider that these amendments will improve the clarity of the relevant sections.

3.10 Customers' right to switch away

The 1991 Act enables Affected Customers to switch away from their Interim Licensee within three months of the Date of Relevant Cessation of Supply by giving notice in accordance with the Licensee's Scheme. It also enables Ofwat, by reference to the ISC, to make provision about the earliest date that this notice may be given and the procedure for the service of this notice.

Section 8.3(e) of the ISC currently states that an Interim Licensee's Scheme must not restrict an Affected Customer's ability to switch to another Licensee or to agreeing different terms and conditions with the Interim Licensee. However, it does not currently provide any guidance as to the earliest date at which a new Licensee (i.e. the one that the Affected Customer is switching to from the Interim Licensee) will take responsibility for supplying services. We understand that this may disincentivise Licensees to participate in interim supply events, to the detriment of customers, because of concerns that they will not be able to recoup on-boarding costs.

The consultation did not propose amendments to the ISC, but instead sought stakeholders' input to establish whether this may be a problem from both a customer and Licensee perspective and, if so, what the solution might be. It was clear that answers provided may be used to amend the ISC, and where necessary, the WRC as well.

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC, either in terms of our reasons for the changes or the legal drafting?

- a. How long does it generally take to on-board a customer? Is this timeframe different where the customer has voluntarily moved to the Licensee in comparison to under the interim supply provisions, or gap site provisions? If yes, please provide details.
- b. Do you have any experience of Affected Customers switching away having been Allocated following an interim supply event? If yes, please provide details.
- c. If you have one, does your current Interim Supply Scheme provide details to Affected Customers of how they can switch Licensee? If yes, please provide details.
- d. Do you think the ISC should state when a new Licensee is able to continue the supply of services from an Interim Licensee? Do you consider that there are potential advantages and disadvantages (both for customers and Licensees) of codifying this requirement?

Consultation responses

The majority of Wholesaler respondents to the consultation considered that this question was for Retailer respondents to answer, with one Wholesaler commenting that they would require further evidence to provide an answer to this question.

CCW commented that they were not able to respond to questions 10a to 10c.

Question 10a:

Of the Retailers that responded to this question, all take different amounts of time and have different approaches to the on-boarding of customers. There was consensus that it was difficult to determine how long the on-boarding of Affected Customers would take following an interim supply event as this was dependent on, amongst other things, the number of customers involved. However, lack of reliable customer data (especially where large numbers of customers are involved) and being able to engage with new customers ahead of commencing the process featured heavily in Retailers' answers; they concluded that on-boarding Affected Customers would take longer than it would otherwise because of this. Resource implications and the number of Areas in which Affected Customers have premises were also considered relevant by some Retailers to the time it would take for on-boarding.

Question 10b:

The majority of Retailer respondents had not received Affected Customers through the interim supply process. Of those that had, one of the Retailers had experience of an Affected Customer switching away having been transferred to them. Having applied resources to on-boarding this customer and carry out an initial meter read, they were not able to recover the cost of these from that customer before they switched.

Another Retailer commented that it was prevented by CMOS from receiving customers who wanted to switch to it from the Interim Licensee within the three month period from the Designated Date. It was not clear why this occurred. We have raised this with MOSL and understand that this may be due to the backdating of the switch. MOSL have confirmed that they have previously worked with Licensees on this issue following an interim supply event.

Question 10c:

The majority of Retailer respondents confirmed that they have a Scheme. One confirmed that their Scheme makes it clear that Affected Customers are entitled to switch to another Licensee or to renegotiate their contract with them. Two other Retailer respondents confirmed that, although not incorporated in their Schemes, they inform Affected Customers of their right to switch by other means.

Question 10d:

CCW considered that a customer's right to switch following an interim supply event should not be changed. They were supportive of the ISC's current drafting which does not allow an Interim Licensee to prevent a switch to another Licensee, or agree different terms and conditions with the Interim Licensee. They noted that the Affected Customer may have been Allocated to a Licensee that they had previously switched away from, and therefore thought it would be unreasonable to prevent that customer switching again. The Schemes should be transparent and inform Affected Customers of how they could switch, with Interim Licensees providing help to them through that journey.

Three of the Retailer respondents did not consider that Affected Customers should be prevented from switching away from the Interim Licensee, citing that this would remove customer choice which would not be appropriate for an event beyond Affected Customers' control. Further, this approach would not be in the spirit of the competitive market.

Four Retailer respondents considered that limiting switching for a specified period, for example until the Affected Customer had paid their first bill, would enable the Interim Licensee to recover their costs, and go some way to making the interim supply process more attractive. One of these Retailers offered an alternative solution which was that where an Affected Customer wanted to switch before the on-boarding process had been undertaken, the new Licensee could take responsibility from the Date of Relevant Cessation of Supply, including liability for Wholesale Charges that had accrued during that time.

Our decision

We acknowledge the comments that have been provided in response to this consultation question. We will be giving further consideration to these responses before determining whether any changes should be made to the codes.

As detailed above, we are working with MOSL to improve data that Interim Licensees will receive. The information gathered as part of this consultation will help us to formulate proposals for this which we will consult on in due course.

The ISC, at section 4.1.5, makes it clear that Eligible Licensees must have a Scheme and that this Scheme should be submitted to Ofwat within a reasonable time of Election, and published on the relevant Eligible Licensee's website. As detailed above, due to the changes to the SISC, we will be requesting revised SISCs from all Eligible Licensees to be submitted in due course. For all existing Eligible Licensees, Schemes should be submitted at the same time as their revised SISC.

3.11 Submission of Transfer Reads following an interim supply event

Section 5.1.10 of CSD 0004 sets out the timeframes for the submission of Transfer Reads from Interim Licensee(s).

We sought views from respondents about whether they considered these timeframes to be sufficient, noting especially that a proportion of the time will be taken up by the Allocation, and subsequent Transfer and Registrations of the IDSPs to Interim Licensee(s).

Consultation questions

Do you have any comments on the proposed changes to the ISC, WRC and/or MAC, either in terms of our reasons for the changes or the legal drafting?

- a. What is your view of the current timeframes for submission of Transfer Reads (set out in section 5.1.10 of CSD 0004)? In providing views on this, please set out what you consider to be an appropriate timeframe, the reasons for this, and any perceived customer detriment where this is an extension to the current limitations.

Consultation responses

Question 11a:

Six respondents had no specific comments in response to this question.

The majority of respondents considered that the timeframe should be extended. Seven of the respondents (five Retailers and two Wholesalers) highlighted that the timeframe should be dependent on the scale of the event with many suggesting that there should be an extension if there is a large scale interim supply event. One Retailer recommended an extension of 20 working days for a large scale event. Five

respondents favoured a flexible approach, whereby the timeframes could be extended by agreement from Ofwat or MOSL.

Respondents gave a number of reasons why the current Transfer Read timeframes might not be workable. These included that:

- There are capacity constraints within meter reading service providers;
- A new / amended contract with a meter reading service provider may be required because of volume increases;
- The timescale for Meter Read submission starts with the Designated Date, which could be significantly earlier than the Transfer Date;
- Modes of communication between Interim Licensee and the meter reader might introduce delays, complications and inaccuracies.
- Opportunities for forward planning are limited and there could be issues with access to appropriate data.

Three respondents (one Retailer and two Wholesalers) suggested that Wholesalers might be able to assist with meter reading. However, details about who would pay would need to be established. A Retailer respondent suggested that, where meters have automated meter readers or logger devices, the Wholesaler should be required to provide the Transfer Read within the relevant timescales. This respondent suggested that as an additional backstop, where a Licensee is unable to take a Meter Read within the required timescales, the Wholesaler should be required to obtain this.

Two respondents (CCW and one Wholesaler) did not support an extension of the Transfer Read timeframe. CCW suggested that this could adversely impact the customer journey, highlighting that billing and charges continue to be one of the main causes of complaints. CCW stated that it would expect to see any such change supported by robust evidence. The Wholesaler respondent suggested that Transfer Reads should be taken within a 10 day window either side of Wholesale Contract termination. This respondent advocated a process to be put in place which could finalise charges quickly when a Retailer exits the market.

Our decision

We acknowledge the comments that have been provided in response to this consultation question. We will be giving further consideration to the Transfer Read timeframe before determining whether a Change Proposal should be raised. As such, we did not propose any amendments to the Transfer Read timeframe in the Change Proposal and have not made a decision in relation to this matter.

3.12 Principles and Objectives of the WRC and MAC

Consultation question

- a. Do you consider that the proposed changes to the WRC and the MAC further the principles and objectives of the WRC and MAC?

Consultation responses [and Panel recommendation]

Question 12a:

All respondents agreed that the proposed changes further the principles and objectives of the WRC and MAC. Some respondents noted in particular that the changes support efficiency, consistency, transparency and clarity for Trading Parties and increase simplicity of the existing procedures. One Retailer caveated that its agreement was subject to confirmation and clarification of points in previous questions, in particular questions 3 and 4.

CCW noted that many of the changes proposed are for the purpose of creating greater consistency and clarity and added that where these are based on lessons learned they are sensible changes to make. CCW wants to see transparency for customers and an improvement to the customer journey and felt changes that were consistent with this aim could be to the benefit of customers and the market.

Our decision

All respondents to the consultation consider that the proposed changes to the WRC and the MAC further the principles and objectives of the WRC and MAC. The Panel agreed with our assessment of which principles and objectives are furthered by the changes.

We consider that the following principles of the WRC are furthered by the changes that we have approved:

Efficiency: Aligning the processes in the ISC and WRC helps to ensure the efficient discharge by the Retailer of its Licence obligations and its statutory duties to the extent impacted by the WRC as the proposed changes provide clarity as to the obligations of Retailers under the WRC.

Proportionality: The Change Proposal removes unnecessary processes from the WRC.

Transparency: The Change Proposal improves the clarity of the interim supply process, removing unnecessary processes from the WRC and including additional information to ensure that the roles (and obligations) of Retailers and MOSL are clearer.

Seamless markets: Improving the interim supply processes will assist in delivering a seamless customer experience, by ensuring that customers are transferred efficiently where a Retailer fails.

Market Terms Objective: The changes to the WRC provide clarity to the interim supply provisions, and thereby assist in enabling the transfer of Non-Household Customers from the Contracting Retailer to another Retailer.

We consider that the amendments to the MAC further the principle of transparency because they remove obsolete definitions and ensures alignment with the WRC. This helps ensure that the MAC is well-structured and readily accessible.

4. Decision on implementation date and next steps

4.1 Implementation date

The Panel recommended that Ofwat approves the amendments to the WRC and MAC with an implementation date of 9 September 2020. The implementation date of the changes to the WRC, MAC and ISC⁹ will need to be aligned as these changes are linked.

Implementation of the approved changes to the codes do not require a proactive response from Trading Parties at the point of implementation. Having also discussed the implementation date with MOSL, it is our view that a short implementation date is workable. We have therefore, decided that the implementation date for the changes that we have approved to the ISC, WRC and MAC shall be 9 September 2020.

4.2 Next steps

We have published on our website a [revised version of the ISC](#) which incorporates the approved changes. MOSL will publish an updated version of the WRC and MAC. We have also published [a note](#) which provides information on the process to outgoing Retailers.

Following implementation of these changes, we will be making consequential amendments to the SISC and we will require all Eligible Licensees to submit revised SISCs via Kissflow. We will communicate with Eligible Licensees separately about this and provide the updated template, which will also be made available on our website. We are working with MOSL to produce a guidance document which will set out the process for Electing (including the submission of SISCs) and the removal of Election.

We will consider further the consultation responses to the following questions to establish if an amendment is required to the codes, and the extent of such change:

- the Business Terms (question 7);
- customer right to switch away (question 10); and

⁹ The Panel only makes recommendations in relation to changes to the WRC and the MAC. The ISC is a statutory code that Ofwat is required to issue and revise from time to time.

- the submission of Transfer Reads (question 11).

We will also be working with MOSL to consider ways of improving the data available to Eligible Licensees about a Previous Licensee's customers at the point of Interim Supply.

Ofwat (The Water Services Regulation Authority)
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