

Interim supply: A consultation on process amendments

South East Water response

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1. Introduction

Thank you for consulting on the proposed changes to the Interim Supply code and related changes to the Wholesale Retail Code.

We considered the proposed changes and believe that the proposed review of the relevant processes will improve the market arrangements.

We have made comments in relation to some consequences of the proposed changes which we believe to be unintended and general comments on the approach to the consequences of termination in the Wholesale Retail Code below.

2. Responses to the 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?

1. AMENDMENTS TO ELECTION PROCESS

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 Statement to Ofwat in the specified circumstances.

d. To align the Suspension process within the ISC and WRC.

We agree with the purpose of the proposed modifications relating to the election process (opt-in and out) to ensure mainly that both the allocator and the offers processes are reflected in the provisions of the ISC and the WRC. We do not have any comments on the wording presented.

However, we believe that for added clarity in respect of the opt-out, it would be useful to deal specifically with any differences that may exist between eligible licensees depending on whether or not they are an acquiring licensee under the Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations 2016. In particular, Regulation 43(2)(a) which provides that acquiring licensees must be on the list of eligible licensees, does not

provide that acquiring licensees can apply to be removed from the list in the same way as is specifically provided in Regulation 43(2)(b) relating to retailers other than acquiring licensees. Ofwat may decide not to include an acquiring licensee on the list of eligible licensees pursuant to Regulation 43(3) but there is some ambiguity as to whether this relates only to the first inclusion on the list or is equivalent to opting-out (after being first included) and in any event, the specific conditions of Regulation 43(3) must be met (i.e. based on the business model of the acquiring licensee and ensuring that at least one acquiring licensee remains on the list). What is the interpretation that has been adopted for the purpose of the ISC in respect of any opt-out of acquiring licensees, as it does not directly deal with this particular aspect? Additional clarity would also be useful on whether the position of acquiring licensees in respect of an opt-out is different in the case of a temporary suspension.

2. STATEMENTS OF INTERIM SUPPLY CAPACITY

a. To insert reference to Alternative Credit Support and Alternative Payment Terms into the Statements?

b. To amend the manner in which Statements are submitted so that they are provided by reference to CSD 0006 rather than directly to an Ofwat inbox.

We agree with the purpose of the proposed modifications relating to the statement of interim supply capacity. We do not have any comments on the wording presented.

3. OFFERS PROCESS: ENABLING AREAS TO BE SPLIT ACROSS DIFFERENT ELIGIBLE LICENSEES

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?

We agree with the purpose of the proposed modifications allowing IDSPs to be allocated to several retailers under the offers process. We do not have any comments on the wording presented.

Consideration could be given to allowing Ofwat to consider offers from retailers that have suspended their election in only some of the areas in a combination of areas by amending 7.2.3 (a). This would provide additional flexibility and would be consistent with the proposal that several retailers may be selected.

This change combined with the new notice to be sent by MOSL (as referred to in the new section 5.3 of the ISC) will make it possible for licensee who may not yet have a wholesale contract with the wholesaler(s) in the relevant area(s) to elect to become an eligible licensee following a Relevant Cessation of Supply. We support opening up the allocation process to as many retailers as possible as this would help cope with the failure of a large retailer where

there may not yet be retailers with sufficient capacity on the list of eligible licensees for the relevant area(s). Consideration should be given as to how wholesalers may be provided with early notice and information to achieve the short turnaround required for a new wholesale contract(s) with new or potential eligible licensees or whether current processes are believed to be adequate.

4. ALLOCATION AND REGISTRATION OF LICENSEES WHO HAVE ELECTED TO BE ELIGIBLE LICENSEES

a. To explicitly reference the Offers process in CSD 0004?

b. The process diagrams for the Interim Supply Offers process and the Interim Supplier Allocation Process are reflective of the proposed amendments?

We agree with the purpose of the proposed modifications relating to the allocation of IDSPs. We do not have any comments on the wording presented other than the minor corrections listed below.

Drafting comments:

- In the new section 3.3.2 of CSD0004, the reference should be to step 1 (not step a).
- In the new section 3.3.6 of CSD0004, the reference should be to step 3 (not step c).
- In the new section 3.4.5 of CSD0004, the reference should be to step 3 (not step c).
- In section 4.3.9 (c) of Schedule 1, Part 4, Market Terms delete "the" after "for the purposes of"
- In section 4.3.9(j) and (l) of Schedule 1, Part 4, Market Terms, delete "Retailer" after "Interim Supplier".
- Definition of Interim Duty Supply Point: delete "the" before "a relevant direction".

5. INTERIM SUPPLIER ALLOCATION METHODOLOGY

a. To clarify that the methodology cited in CSD 0004 only applies to the Allocator process?

b. That an Eligible Licensee's Statement on capacity should be taken into account under the Allocator process.

We agree with the purpose of the proposed modifications to clarify that the process in CSD0004 applies to both the allocator and the offers process and to take account of the capacity stated by the relevant retailers. We do not have any comments on the wording presented.

6. TIMETABLING FOR THE ALLOCATOR PROCESS

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

We agree with the purpose of the proposed modifications relating to the timetabling for the allocator process. We do not have any comments on the wording presented.

7. CESSATION OF SUPPLY

a. To extend the circumstances in which Ofwat may invoke interim supply to include where a Licensee has consented to the revocation of its License?

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 its License is revoked?

We agree with the purpose of the proposed modifications relating to cessation of supply. We set out below our comments on the proposed provisions:

- With the deletion of 10.1.14 from the Business Terms, on revocation of the licence (which leads to automatic termination of the wholesale contract) the retailer is no longer a Defaulting Trading Party. Under 9.14 of the Business Terms, a wholesaler can only enforce its rights under the credit support (i.e. any cash security, guarantee, letter of credit, bond or alternative eligible credit support) if the retailer is a Defaulting Trading Party. This means that as a result of the deletion of 10.1.14 of the Business Terms, the wholesaler would no longer be able to draw on the credit support when the licence is revoked and the wholesale contract is automatically terminated. Even if it is likely that a revocation of the licence would be preceded by a payment default or other default that would make the retailer a Defaulting Trading Party, this might not always be the case. The deletion of 10.1.14 as proposed would create an additional unsecured exposure for wholesalers which we believe is not intended. Wholesalers should be allowed to draw on the credit support in case of termination (on any ground) especially because they would no longer be in control of the timing of the termination. We suggest to revise section 10 of the Business Terms to ensure that a retailer will be a Defaulting Trading Party if their licence is revoked (even if this is not linked to the ability of the wholesaler to terminate).
- There are also several issues relating to the consequences of termination (in case of automatic termination or termination for other reasons) that it would be appropriate to address:
 - Section 4.3.9 of the Market Terms 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. In order to cover

the automatic termination in case of revocation of the retailer's licence by Ofwat, this should be amended to refer to the termination of the wholesale contract (for any reason).

- We believe that the 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. In the context of a termination of the wholesale contract, this is appropriate in respect of charges that were 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;

(b) Sums that will be ascertained and invoiced post termination (the settlement report will be run after termination).

In respect of (a) above, 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 wholesaler to delay calls on credit support in respect of sums ascertained.

In respect of (b) once the settlement report has been run after termination, we believe that wholesalers should be entitled to invoice immediately and that the invoice should be payable immediately. 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 do 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.

We believe that it would also be useful to confirm that settlement runs on CMOS post termination correctly reflect the timing described in the provisions (for example that the interim licensee takes over the supply points from the date of termination rather than for example being deemed to have been assigned to the interim licensee before that date) and that there is no need to make accounting adjustments relating to the period preceding the termination date which could be significant.

8. PROVISION OF INFORMATION TO AFFECTED CUSTOMERS

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

We agree with the purpose of the proposed modifications relating to the information to be provided to affected customers. We do not have any comments on the wording presented.

9. OTHER PROPOSED CHANGES

a. To amend the 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?

We agree with the purpose of the proposed miscellaneous changes. We do not have any comments on the wording presented.

10. CUSTOMER RIGHT TO SWITCH AWAY

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 the Interim Licensee? Do you consider that there are potential advantages and disadvantages (both for customers and Licensees) of codifying this requirement?

Retailers are best placed to respond.

11. SUBMISSION OF TRANSFER READS FOLLOWING AN INTERIM SUPPLY EVENT

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.

We recognise that there will be a trade-off between ensuring reads are taken in a short timeframe to ensure a smooth customer switch, and the practical difficulties for retailers to undertake a potentially large volume of reads in a short space of time. Timeframes could vary depending on the volume of interim supply points transferred.

Considering the position of non-household customers and in particular those required under their contract with a retailer to pay water charges in advance, early reads would improve visibility of what should be refunded to them by the previous retailer.

A practical solution may be to favour the use of customer reads in these circumstances. Customers could be invited to submit reads preferably through a website to avoid overloading interim licensees' contact centres. Customers could be informed of that possibility as part of the information to be provided by interim licensees under section 9 of the ISC. This would help ascertain any amount refundable by the previous retailer and improve the accuracy of the bills from the interim licensee. It would also improve the accuracy of wholesale charges to the interim licensee and limit future adjustments.

12. DO YOU CONSIDER THAT THE PROPOSED CHANGES TO THE WRC AND THE MAC FURTHER THE PRINCIPLES AND OBJECTIVES OF THE WRC AND MAC?

We have not identified any matter in relation to the proposal that we would consider to be contrary to the principles and objectives of the WRC and MAC.

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