



# Business Retail Market Proposals to deal with un-invoiced Wholesaler charges in the event of an unplanned Retailer exit

## Southern Water Response

Thank you for the opportunity to respond to your consultation on un-invoiced charges in the event of an unplanned retailer exit. In general, we support the proposed changes to the company licences, and have provided responses to the specific questions below.

### Consultation

1. Does our proposed approach deliver the following policy aim in a way that is consistent with our statutory duties?

**“in the event of a Retailer’s unplanned exit from the business retail market, a Wholesaler should be able to recover relevant un-invoiced revenues for services that the Wholesaler has provided to that Retailer - but were not due for invoicing or had not been invoiced - at the point of Retailer failure.”**

We believe that the proposed approach delivers the policy aim, however we have specific feedback on the proposed draft changes to the company licence:

We are concerned that the draft legal text proposed does not cover all situations where a retailer is no longer able to pay the Wholesaler. Specifically, the implication of the current drafting is that the Appointee can only include debt owed by Retailers who no longer exist in law, i.e. have been struck off the Company Register (or certified dead, if an individual). In reality, in insolvency terms, a company (or individual) may have long before this stage ceased to be a “going concern” and have been stripped of its Ofwat licence (or, at least, permanently suspended), and the Appointee would still be unable to recover unpaid debt because the Retailer has not yet legally ceased to exist. As “going concern” has a well-known meaning in insolvency law and is recognised by HMRC, we suggest the revised definition provided below would be more appropriate. The revised definition would also be more consistent with the proposed new commentary on the UIRt definition outlined in the update to the Reconciliation Rulebook on page 10, which references Retailer failure and market exit.

We also see no reason for an automatic two year lag in the adjusted allowed revenue; in some cases it will be possible for it to be applied the following year. Consequently we propose un-invoiced revenues to be recovered for a “prior charging year”. For clarity, we also propose the definition to state that the net amount owed is the un-invoiced amount after deducting the value of securities and credit protections.

**Proposed revised legal drafting for new term “UIRt”:**

*UIRt = The total amount in £ millions owed to the Appointed Business for activities in ~~charging year~~ ~~±2~~ **a prior charging year** to which the relevant network plus or water resources price control applies by one or more Licensees that have ceased **trading as a going concern and whose retailer (water supply and sewerage) licence has been revoked or permanently suspended** ~~to be a legal entity (or, if the Licensee is an individual, has died)~~ in relation to the **net un-invoiced amounts after deducting the value of credit security** ~~period following the end of the period that was covered by the last invoice issued to the Licensee by the Appointee for those activities.~~*

- 2. Do you agree that it is appropriate to apply company specific Totex cost sharing rates to amounts relating to un-invoiced revenue to be recovered via the RFI mechanism in the event of a Retailer failure?**

We agree that, in order to align with the invoiced revenue bad debt risk sharing, it is appropriate that the Totex cost sharing rates should be applied to the un-invoiced revenue recovered via the RFI mechanism.

- 3. Do you have views that alternative approaches may be more effective or straightforward to implement?**

Other than our proposed revision of the UIRt definition, we have no further alternative amendments or approaches.

- 4. Do you agree with the proposed change to the WRC? Please explain your answer.**

We agree with the proposed change to the WRC and believe it is required to cover all sums owed.

- 5. Do you agree with proposed amendments to the legal drafting? Please explain your answer.**

We agree with the proposed legal drafting to section 9.14.2 of the WRC and believe it is sufficient to cover all sums owed, be that invoiced or un-invoiced.

As previously stated, we have proposed amendments to the legal drafting of the licence condition.

- 6. Do you agree that the proposed change to the WRC furthers the objectives and principles set out in WRC Schedule 1, as described in section 4 above?**

We agree that the proposed change to the WRC furthers the objectives and principles.

Should you have any queries on our response or would like to discuss further, please do not hesitate to contact me.

Yours sincerely,

[Redacted signature]

**Dylan Freeman**  
Markets and Competition Manager



