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Executive summary

I. Background

- i. The Water Act 2014 received Royal Assent on 14 May 2014. It introduces reforms that will extend competition in the retail market for non-household water and sewerage services in England. This includes powers that enable the Secretary of State to allow water and sewerage undertakers to cease to offer retail services to non-household customers - this is known as “retail exit”.
- ii. Undertakers that choose to exit will be able to transfer their non-household customers to one or more licensees for the provision of retail services. This will require the removal from the undertaker of the legal powers and duties relating to the provision of these services. Undertakers who wish to exit will be able to do so when the retail market opens in April 2017, subject to meeting clearly specified criteria.
- iii. The policy driver for enabling retail exits is to ensure a well functioning competitive market. Retail competition will give all non-household customers choice over their water and sewerage supplier. This will require that undertakers are able to make informed choices about their retail strategies—including the choice about whether they wish to compete in this market.
- iv. The Government is not seeking to require undertakers to exit, nor are we seeking to shape the market in any particular way. The objective is to put in place a framework that will allow the competitive market to evolve.

II. The Government’s proposed approach

- i. The Government is committed to creating a light-touch process designed to allow undertakers the freedom to choose their preferred business strategy for the non-household retail market. The customers of an exiting undertaker should have access to the same safeguards as they would have had if they had remained with the undertaker. This “principle of equivalence” between those customers transferred to a licensee following an exit and those customers whose undertaker has chosen not to exit the market underpins the Government’s proposed approach to exits.

Deemed contracts

- ii. Most water and sewerage customers do not operate under a contract with their undertaker. Instead, the essential terms under which undertakers have a duty to supply both wholesale and retail services and customers must pay for these services are set out in legislation. Customers that opt to switch to a new licensee to provide their retail services will negotiate a contract.
- iii. However, unless we explicitly provide for it, there would be no formal contract and no clear legal rights in place for transferred customers immediately following an exit. In order to ensure the principle of equivalence, we therefore propose that a **deemed contract** should apply in all instances where a non-household customer is served by a licensee but has not negotiated a contract with that licensee. We anticipate that Ofwat will publish a template deemed contract that will include a clear set of baseline terms and conditions covering both service and price by **March 2016** (see section 4, pp 15-17).
- iv. All licensees will always be free to offer customers a better deal than that represented by the deemed contract and our expectation is that they will seek to do so. Similarly, all customers will retain the option to switch to a negotiated contract, with either the acquiring licensee or any other licensee.

Price and non-price terms

- v. With regard to **price terms**, we must ensure that the customers of exiting undertakers do not lose access to price protections as a result of being transferred. We will therefore use the deemed contract to secure a transparent set of fair price terms for all transferred customers, which will continue until such point as they decide to switch or renegotiate. We are seeking advice from Ofwat about the best way to achieve this (see section 5, pp 17-19).
- vi. With regard to **non-price terms**, all customers will need to be assured that they will receive a good retail service following an exit. There is currently a range of practice across the industry in terms of service standards, including both formal and informal arrangements with individual customers. As a consequence, there is a choice about whether individual arrangements should be included in the deemed contract or whether a new, transparent set of contractual arrangements should be created. We propose that any pre-existing contractual arrangements between the customer and the undertaker will be passported across to the new regime, and that the deemed contract will set out a clear set of essential non-price terms that will apply in all other cases.
- vii. The Water Act 2014 also includes powers for ministers to apply **Guaranteed Service Standards** to licensees as well as undertakers, based on

recommendations from Ofwat. We therefore anticipate that Ofwat will cross refer to the standards set out in the revised Guaranteed Service Standards when designing the template deemed contract (see section 6, pp 20-21).

Subsequent transfers

- viii. In order to ensure that customers remain protected following both an initial exit and any **subsequent transfers**, we propose that all transferred customers (that have not negotiated individual terms with their supplier beforehand) will transfer on the terms set out in the deemed contract. This will mean that both the price and non-price terms set out in the deemed contract will continue to apply to the customer until such point as they choose to switch or renegotiate (see section 8, pp 22-23).
- ix. There is also a choice about how far the principle of equivalence applies in respect of **transferred customers that choose to switch** from the acquiring licensee to a different licensee but wish to return to the original licensee at a later date. The customers of an undertaker that has not exited will have the right to switch to an alternative licensee and to return to the undertaker at any point. We therefore propose that, for two years following a transfer, customers will have the right both to switch away from the acquiring licensee and to return to them on the deemed contract terms and conditions (see section 9, pp 23-24).

Supplier of first and last resort arrangements

- x. One of the core assumptions underlying the retail exit policy is that all non-household customers must be able to access both a wholesale and retail service following an exit. New customers arising in an undertaker's former area of appointment can voluntarily identify a licensee to provide their retail services; and the expectation is that in most cases they will do so. For the cases where this does not happen, we propose to introduce a "**supplier of first resort**" panel across England made up of licensees that are available to take on new customers. All acquiring licensees will be required to join the panel and become suppliers of first resort unless they are self-supply licensees or have another good reason not to do so (see section 10, pp 24-25).
- xi. Similarly, we will amend the "**supplier of last resort**" regime so that it also provides a default supplier of last resort for transferred customers whose undertaker has exited the market. The expectation would be that all acquiring licensees would opt in to the supplier of last resort regime. In transfers to more than one acquiring licensee, as above, there will be an exception for self-supply licensees or those licensees that wish to specialise in providing niche services. However, at least one acquiring licensee would have to opt in (see section 11, pp 25-26). For both regimes, Ofwat will be required to publish transparent criteria against which they will judge whether a licensee should be allowed to opt out.

Roles and responsibilities of undertakers and licensees

- xii. Some licensees will seek to specialise in serving specific classes of customers while others will wish to maximise economies of scale by serving a larger customer base. Exit will require the removal of certain powers and duties from the undertaker and some of these roles and responsibilities will need to be adopted by the acquiring licensee. The Secretary of State will need to be assured that an acquiring licensee has sufficient capacity and capability to meet these requirements before granting an exit application. We therefore anticipate that Ofwat's approach to licensing will be sufficiently flexible to accommodate a diversity of licensees—and, in particular, to reflect the potential differences of scale between acquiring licensees and other businesses entering the market (see section 7, pp 21-22).

Applying for exit

- xiii. We want to implement a simple, light-touch **applications process** that provides maximum certainty for all market participants. In particular, we will wish to avoid any risk that the process could become bureaucratic or create unnecessary duplication with activity that we see as being for the regulator rather than the Secretary of State to drive. We therefore propose to introduce a clear framework of requirements that apply equally to all parties as opposed to bespoke conditions that are specific to individual undertakers or individual exits (see section 12, pp 26-28).
- xiv. Further detail about the Secretary of State's criteria is laid out below (see section 12, pp 27-28). This will include a requirement for undertakers and licensees to communicate with customers at specified points in the application process—both before and after the transfer. This is because effective **customer communication** is a key tool for ensuring that all transferred customers have a positive experience of the process (see section 13, pp 28-29).

III. How to respond

- i. The consultation period will run from Wednesday 10 December 2014 to Wednesday 18 February 2015. You can respond online at www.gov.uk/defra. You can also respond via email to: RetailExitsConsultation@defra.gsi.gov.uk. The postal address for responses is: Water Reform team, Area 3B, 17 Smith Square, London SW1P 3JR. Please make sure your responses reach us by Wednesday 18 February 2015.

1. Introduction

1.1 The Water Act 2014 received Royal Assent on 14 May 2014. It introduces a number of reforms that will enable the water sector to deliver increased resilience, increased customer choice and support economic growth. A key plank of these reforms is the extension of competition in the retail market for non-household water and sewerage services in England. This will mean that all non-household customers—i.e. businesses, public sector organisations and charities—will be able to switch from their local monopoly water company (or “undertaker”) to another supplier that is licensed to provide retail water and sewerage services (known as a “licensee”). Retail services incorporate all of the customer-facing activities that a water company may undertake. These are distinct from the “wholesale” activities involved in sourcing, transporting and treating water and waste water. The Government is working closely with Ofwat and the Open Water Programme (“Open Water”) to implement the retail competition reforms in the Water Act 2014 in time for retail market opening in April 2017.¹

1.2 The Water Act 2014 also enables the Secretary of State to introduce regulations that will allow undertakers to exit the non-household retail market with the consent of the Secretary of State (“retail exit”). This will mean that undertakers will have the option to cease to provide non-household retail services and to transfer their non-household customers to one or more licensees from market opening. Because there are currently statutory requirements on undertakers to serve all customers within their area of appointment, this will require the removal of the legal powers and duties relating to the provision of retail services to non-household customers.

1.3 Following Royal Assent, the Government has undertaken an extensive programme of stakeholder engagement to ensure that the approach we take to implementing this policy reflects the views of all those affected: customers, undertakers and new-entrant licensees. This has included publishing a discussion document on 11 July 2014,² holding a stakeholder workshop on 18 July 2014, meeting individual companies to discuss their views and establishing a contact group to provide expert input on particular aspects of the policy. The views gathered through this process have played an important role in informing our policy thinking; as we seek to balance the needs of all parties. This consultation document builds on that feedback; setting out the policy issues arising from the retail exits reform and seeking your comments on the Government’s proposed approach to implementation.

¹ <http://www.open-water.org.uk/>.

² Department for Environment, Food and Rural Affairs, *Water Act: non-household retail exits Discussion document* (2014): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329812/retail-exits-discussion.pdf.

Retail competition – providing choice for customers

The Government has decided to expand retail competition in response to clear demand from business customers. Research carried out in 2012 found that over two thirds of small & medium-sized businesses support competition in the water industry.³ **Our reforms will mean that all businesses are free to negotiate for the package that best suits their needs.** Benefits may come from more efficient customer service, better-tailored packages, water efficiency advice, or a better deal on price.

In Scotland, all non-household customers have been able to switch their water and sewerage service supplier since 2008. More than 45,000 customers (around 50%) have renegotiated the terms of their supplies. The public sector in Scotland is forecast to save over £36 million over four years from discounts to prices and new water efficiency measures.

Large multi-site businesses, such as retail chains, hospitals and supermarkets, will be able to make savings by choosing to deal with one single supplier across England and Scotland for all their water and sewerage needs. One business customer who receives over 4,000 paper bills a year for their different sites could save £80,000-£200,000 per year in administration costs alone.⁴

Large water users might look for a water supplier that provides them with better data on their water usage, smart metering, online support and advice on water efficiency to help them to reduce waste. This offers obvious environmental benefits as water companies seek to attract new customers through new water efficiency services and advice. In Scotland, Business Stream estimates their water efficiency services have saved customers over £13 million and saved 7.4 billion litres of water.

Once the retail market opens, all non-household customers will be free to switch suppliers. This includes the customers of undertakers that choose to exit the market. If a customer decides that they want to switch supplier rather than being transferred as the result of an exit, the Government will ensure that they will experience a smooth, seamless transition.

³ “Understanding the Needs of Small and Medium Enterprise Customers”, Consumer Council for Water and Ofwat, 2012

⁴ “Water retail services competition in England and Wales: Still Hobson's choice”, Policy Exchange, 2011

2. Background

Scope of the reforms – what is retail exit?

2.1 The Water Act 2014 contains a broad enabling power to make regulations that will allow undertakers to apply to the Secretary of State to exit the non-household retail market. These exit regulations will need to make a substantial number of changes to both the Water Act 2014 and Water Industry Act 1991. This is because, since 1991, all water industry legislation has been premised on the idea of vertically integrated undertakers that are required to provide bundled wholesale and retail services to all premises in their areas of appointment. We will consult in early summer 2015 on the specific detail of these regulations.

2.2 The overarching policy driver for enabling retail exits is to ensure a well functioning competitive market. The purpose of increasing competition is to give non-household customers choice over their water and sewerage supplier. Retail competition will expose water and sewerage undertakers to the pressures of the marketplace. It is important therefore that those undertakers are able to make informed choices about their retail strategies; including deciding whether or not they wish to compete in this market. In enabling retail exits the Government is not seeking to require undertakers to exit, nor are we seeking to shape the market in any particular way. Rather, we are seeking to enable the market to evolve in response to the business decisions companies take.

2.3 The high-level scope for the retail exits policy has been shaped by the parliamentary debates during the passage of the Water Bill. During these debates the Government made a number of key commitments:

- a) Retail exits must be voluntary – it will be a choice for the boards of companies whether or not to exit.
- b) Exit will relate only to the part of the retail market that serves non-household customers.
- c) All customers that are transferred as a result of an undertaker's decision to exit will have access to an appropriate level of protection.

Implementing the retail exits reform: policy approach

2.4 The Water White Paper set out the Government’s clear commitment to ensure that “*the expansion of competitive markets does not create problems for non-household customers that decide to switch suppliers*”⁵. In enabling undertakers to exit the non-household retail market we have a responsibility to ensure that the same protections are extended to customers that have been transferred without deciding to switch suppliers. This means that the customers of an exiting undertaker should have access to the same safeguards as they would have had if they had remained with the undertaker. This principle of equivalence, between customers that have been transferred following an exit and customers who are served by an undertaker that has not chosen to exit, has guided the development of our preferred approach to implementation.

2.5 In securing this objective we have a number of tools available to us. Some safeguards will need to be set out in the regulations; others will be delivered through the Market Codes that govern the relationship between undertakers and licensees. The licence will be an important tool for securing standards within the competitive market. Other tools include price protection, the extension of Guaranteed Service Standards to retailers and Ofwat’s proposed Code on Miss-selling. The Government is working closely with Ofwat and Open Water as many areas of their work in respect of the retail market will have a strong interaction with retail exits policy.

2.6 The Water Industry Act 1991 does not define either retail or wholesale services but it contains certain “supply duties”, which includes the main customer-facing functions. These will need to be removed or modified at exit. Following an exit, the undertaker will retain the responsibility for making new connections and providing water and removing wastewater for non-household premises in their area of appointment. However, they will only be able to collect wholesale charges from licensees and will no longer be able to directly collect charges from non-household customers.

2.7 The exit regulations will need to make clear which statutory functions will be removed from exited undertakers and whether these need to be applied to another party—for example, the acquiring licensee. The Government intends only to make changes to undertakers’ duties where this relates to the undertaker’s obligations to provide retail services to non-household customers in their appointed area.

⁵ Department for Environment, Food and Rural Affairs, *Water for Life* (White Paper, Cm 8230, 2011) p 76, para 5.61: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228861/8230.pdf.

Exit in the context of companies' retail strategies

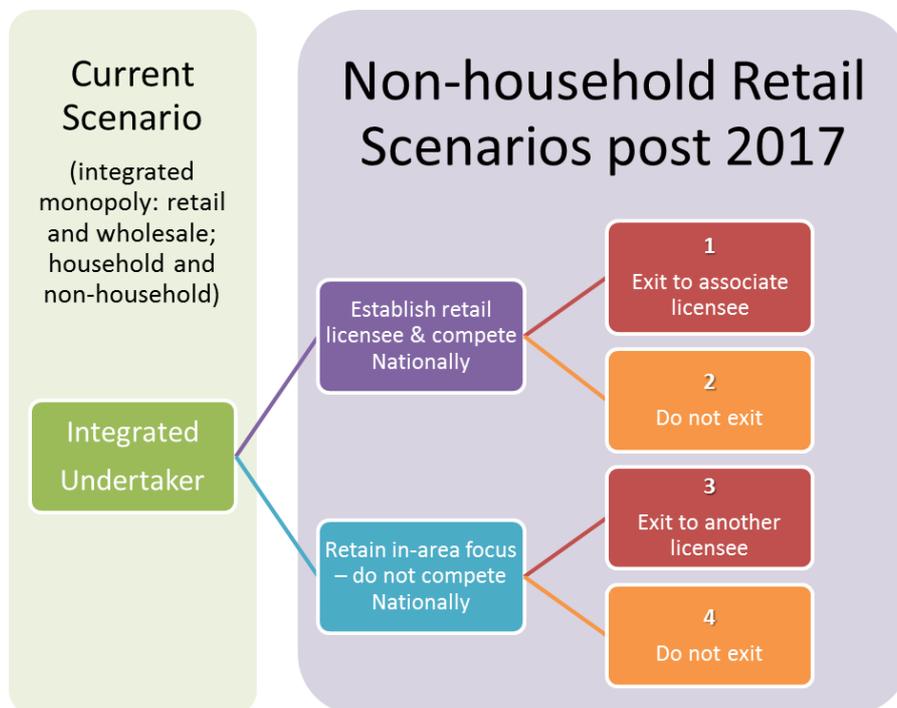
2.8 All undertakers will need to develop a retail strategy in advance of market opening. Doing this will require them to take decisions about whether or not their group business will wish to compete in the national market for non-household retail services, either at market opening or at a later date. An undertaker cannot compete in this national market under its own licence of appointment; it must establish a separate legal entity with a retail licence. Such bodies are described here as “associate licensees” to distinguish them from the licensees set up by new businesses entering the market and from the in-area non-household retail arms of undertakers.

2.9 The Government's decision to enable undertakers to exit the non-household retail market provides a further choice for undertakers. The figure below sets out the four broad approaches that are available to undertakers.

- Scenarios 1 and 2 are options available to an undertaker that has **chosen to compete** in the national market for non-household retail services.
- Scenarios 3 and 4 are options available to an undertaker that has **chosen not to compete** in the national market for non-household retail services.

The Government has no preference regarding which of these strategies undertakers may choose to adopt.

Figure 1: Non-household Retail Scenarios post 2017



Removal of the in-area trading ban and associated licence conditions

The Water Act 2003 placed a statutory duty on both ministers and Ofwat to ensure that associate licensees did not operate in the area of the undertakers they were associated with. The in-area trading ban in the Water Supply Licence prevents water supply licensees from providing services to any site in the area of appointment of an associated undertaker. Similarly, licence Condition R in the water and sewerage undertaker's licence of appointment places limitations on the transactions that can be carried out between an undertaker and a 'related' licensee. This means that undertakers may not make water or any other assets available to an associated licensee without the consent of Ofwat. The purpose of these measures was to ensure that undertakers could not show any undue preference to an associated licensee, at the expense of other licensees.

The introduction by Ofwat of separate wholesale and retail price limits and a number of the reforms included in the Water Act 2014 will create greater transparency and so reduce the potential for such discriminatory behaviour. Following these reforms, the in-area trading ban could place associated licensees at a potential disadvantage to their competitors. This is why the Government and the regulator are committed to removing the in-area trading ban and associated measures well in advance of market opening. The requirement for transactions between undertakers and associated licensees to be managed separately and without discrimination will be retained.

This issue is relevant to exits because one way for an undertaker and licensee to minimise the risks and reduce the costs associated with making the transition towards an exit, prior to receiving confirmation that an exit application to the Secretary of State has been successful, would be to establish an outsourcing agreement allowing the licensee to take responsibility for making the necessary preparations for engagement in the national retail market. This could have the joint benefits of smoothing any transition for customers by ensuring that systems are prepared well in advance of a transfer; and avoiding the need to duplicate the activity required for market readiness. This could help to manage any risks around uncertainty for undertakers that want to exit at market opening. It could also simplify matters for undertakers that do not wish to exit but do wish to outsource their in-area non-household retail activities to an associated licensee.

The Government repealed the duty on ministers and Ofwat through a provision in the Enterprise and Regulatory Reform Act 2013, which came into force in June 2013. Two recent regulatory decisions by Ofwat in response to applications by undertakers to undertake transactions with their associated licensee have granted permission under condition R on the basis that there are alternative mechanisms for managing any risk of discrimination. **Ofwat has made a commitment to consult on the removal of the in-area trading ban provisions from the Water Supply Licence standard conditions by the end of February 2015. At the same time, Ofwat proposes to consider the possible removal of the related provisions contained in Condition R from undertakers' conditions of appointment and any associated amendments.**

Retail exit assumptions

2.10 Drawing on input from stakeholders, we have already published a number of assumptions that underpin our proposed approach to retail exits.

I. Exit from the non-household retail market will entail the removal from the undertaker of statutory powers and duties relating to both existing and future non-household retail customers. The current legal framework provides undertakers with powers to bill all customers within their area of appointment and places them under a suite of duties to supply water and sewerage services (including retail services) to all of those customers. This will have to be unwound.

II. All customers of an exiting undertaker must be transferred to a licensed retailer. The legal entity that receives the transfer of non-household retail customers following the exit of an undertaker must hold a Water / Sewerage Supply Licence.

III. Exit is irreversible – from the point of transfer onwards the undertaker will no longer be able to provide retail services to non-household customers. Should an exited undertaker wish to re-enter the market at a later date they will be free to establish an associate licensee in order to compete in the national non-household retail market.

IV. Exit is complete – the statutory duty to supply cannot be removed in respect of any individual class of non-household retail customers. All non-household retail customers must be transferred from the exiting undertaker to one or more licensed retailers at the point at which the relevant duties are removed.

V. Following exit further customer segmentation is likely to occur through subsequent transfers. Once an undertaker's non-household retail customers have been transferred to one or more retailers operating in the competitive market, experience from other sectors suggests that further customer segmentation is likely to take place through a process of mergers, acquisitions and transfers between licensees.

VI. The option to exit is available at (but not before) market opening in April 2017. Following market opening, transferred customers will have the right to switch suppliers and therefore have access to the protection of the competitive market.

VII. Undertakers applying to exit will have a high degree of certainty about the criteria on which the Secretary of State will take a decision. In order to take the necessary business decisions and enter into negotiations prior to market opening, undertakers will need to have clear visibility of the criteria on which the Secretary of State will take a decision regarding an exit application.

VIII. Exits and transfers will be managed in a proportionate, transparent and efficient way. The process for enabling exits and all decisions relating to subsequent transfers will be designed to minimise complexity and cost for all market participants including undertakers, licensees and customers.

IX. All non-household customers must be able to access a supplier. At present, the Water Industry Act 1991 secures that all water and sewerage customers receive both a retail and a wholesale service. In making changes to the existing framework to allow exits to take place, the Government is committed to ensuring that all water and sewerage customers continue to receive both a wholesale and a retail service.

X. The process for enabling exit will seek to minimise any barriers to entry. The process for enabling exits will be designed in a way that enables a diverse range of new players to enter the market as licensees.

3. Policy choices: the Government's proposed approach

3.1 The rest of this document sets out at a relatively high level the key elements of our proposed framework for implementing the retail exits reform. This approach has been guided by the overarching principle of equivalence between customers that have been transferred following an exit and customers in an area where the undertaker has chosen not to exit the market.

3.2 We want all non-household customers to experience the benefits of the competitive market. In consenting to an exit, the Secretary of State will need to be assured that the acquiring licensee is able to take over some of the key roles and responsibilities of the undertaker in respect of the transferred customers. Some of these roles and responsibilities will be secured through the licence, others will be addressed through the Market Codes or the deemed contract and others still will need to be secured through the exit regulations themselves.

Q1: Do you agree that we should seek to secure equivalence between customers that have been transferred following an exit and customers who are still served by an undertaker that has not chosen to exit the market—and, if so, why?

Q2: Are there circumstances in which you think this might prove difficult to achieve? If so, how could we best approach this?

4. Deemed contracts

What's the issue?

4.1 In contrast with other regulated utilities, the vast majority of water and sewerage customers do not operate under a contract with their undertaker. This role is filled by the

Water Industry Act 1991 and associated secondary legislation, which sets out the essential terms under which undertakers have a duty to supply both wholesale and retail services and customers must pay for these services. This includes customer service standards—known as Guaranteed Service Standards (“GSS”). These are standards of performance that undertakers must meet when providing services for customers—in the retail context this includes response times for written complaints, meeting appointments and so on.

4.2 Prices are currently regulated through the price review process and set out in undertakers’ charges schemes. From April 2015 all undertakers will be required to offer price protection in the form of default tariffs to their non-household customers. Exit will require us to unpick the legislative and regulatory framework which currently sets terms and conditions for non-household customers. Customers that opt to switch to a new licensee to provide their retail services will negotiate a contract but, unless we explicitly provide for it, there would be no formal contract and therefore no clear legal rights in place for transferred customers immediately following an exit.

4.3 There is a consensus amongst all stakeholders that there must be clarity regarding the terms and conditions which transferred customers can expect following exit. The Government’s view is that certainty in this area is an essential element in a well functioning competitive market. This is a priority for all market participants. We will therefore need to ensure that transferred customers have access to the legal protection of a contract in order to ensure clarity amongst all parties regarding the expected level of price and service standards. These standards will need to be carefully calibrated in order to ensure that the appropriate customer safeguards are in place without acting as a barrier to market engagement for example by limiting the scope for innovation or creating unintended disincentives to market engagement.

Proposed approach

4.4 The Government wants to protect both customers and licensees by clarifying their relationship following an exit. **The Government therefore proposes that a deemed contract should apply in all instances where a non-household customer is served by a licensee but has not negotiated a contract with that licensee.** This would cover not only the transferred customers of an exited undertaker but all situations where a customer is served by a licensee in an exit area and no contract has been agreed. This would include, for example: new customers arising in an area where an undertaker has exited, customers whose premises need to be reconnected, customers whose premises have been previously unoccupied and the owners or occupiers have not identified a licensee and customers who are still receiving retail services after their contracts have expired. In those cases where a non-household customer has negotiated specified terms and conditions with their undertaker we could expect that contract to continue to apply. All other customers would be covered by the deemed contract.

4.5 The exit regulations will need to place a duty on Ofwat to produce a deemed contract and to keep it under review. We anticipate that Ofwat will consult on and publish a template deemed contract; and that an initial consultation on the content of the deemed contract will be issued alongside the publication of the draft exit regulations and retail licence for consultation in **Summer 2015**. Following this we anticipate that a finalised template deemed contract will be available by **March 2016**, in order to inform the decisions taken by new entrants at the point they apply for a licence. We envisage that a deemed contract would provide a core set of safeguards covering both price and non-price terms. The proposed approaches to these are set out in greater detail in sections 8 and 9 below.

Q3: Do you agree that there should be a deemed contract in all instances where a non-household customer is served by a licensee in an exit area but has not negotiated a contract with that licensee—and, if so, why?

Q4: What terms do you think should feature in the deemed contract?

5. Price terms

What's the issue?

5.1 Price terms will provide the clearest benchmark against which customers transferred following an exit will be able to assess their first experience of the market. Any lack of clarity on behalf of either customers or acquiring licensees regarding the basis for charges would be unacceptable. This is why we have established that there must be a deemed contract in place which secures a transparent set of both price and non-price terms.

5.2 From April 2015, until the end of the current price review period, all undertakers will be required to offer a default tariff to all non-household customers. These default tariffs will comply with the average revenue controls set by Ofwat as part of the 2015 Price Review process. Default tariffs will not apply to licensees. Before the decision was taken to enable exits, the assumption had been that any customer that switched would retain the option to switch back to the undertaker on default tariff terms. However, this will no longer be an option for transferred customers following an exit.

5.3 In Scotland, all licensed service providers (retail licensees) are required to offer a standard, 'default' level of service, for a 'default' tariff. These default tariffs are published by the Water Industry Commission for Scotland (WICS) and are set at the "*prices which customers would have been charged if Scottish water was still providing the services directly*". In March last year, WICS took the decision to freeze the default tariffs in Scotland in nominal terms at 2013-14 levels until March 2021. The expectation in Scotland is that

competition will encourage retail licensees to offer better prices and levels of service in order to win and/or retain customers. Customers that are active in the market should therefore expect to pay less than the default tariffs.

5.4 In enabling undertakers to exit the non-household retail market we must ensure that their customers do not lose access to price protections as a result of being transferred. In addition, we need to ensure that there will continue to be effective mechanisms in place for establishing a transparent set of price terms for inclusion in both new and existing deemed contracts.

Proposed approach

5.5 **We will ensure that after their undertaker has exited the market all transferred customers will continue to receive a transparent set of fair price terms through the deemed contract. This will continue until such point as they decide to switch.** All licensees will always be free to offer customers a better deal than that represented by the deemed contract and our expectation is that they will seek to do so. Similarly, all customers will retain the option to switch to a negotiated contract, with either the acquiring licensee or any other licensee.

5.6 We have been working with Ofwat to understand the options for securing an equivalent level of price protection for the transferred customers of exited undertakers. The broad options over the medium term are:

- A) That the default tariff for the exited undertaker's area of appointment would continue to apply to all the non-household customers in that area of appointment that have not opted to switch. This would require the licensee to set default tariffs by following the same methodology as that which the undertaker would have used.
- B) That the deemed contract should include price terms which are identical to those that the customer was receiving from its undertaker at the time of the retail exit.

5.7 The first option would peg the price terms in the deemed contract to an equivalent *process* as that used by the undertaker for arriving at a tariff, rather than to an equivalent *price* for an individual customer. It would create significant scope for licensees to re-apportion costs between customer groups. The potential drawbacks to this approach would be that it could increase complexity for both customers and licensees. If undertakers were to price below the default, it could also lead to short-term price increases following an exit.

5.8 The second option would be simpler. It would provide a published tariff to which the deemed contract would be pegged for two years following market opening. **The Government therefore proposes that, at market opening, the deemed contract should include price terms which are identical to those that the customer was receiving from the undertaker at the point of exit.** Some degree of managed flexibility

may be required to address instances where it can be demonstrated that the undertaker has set their tariffs unsustainably low. The Government will seek advice from Ofwat on how to address this eventuality.

5.9 A further question then arises as to how price terms will be set in the deemed contract post 2020. While some undertakers are likely to wish to exit at market opening, others may wish to do so at a later date. We expect that, once the market has opened, many customers will choose to negotiate the contract that best suits their needs. Nevertheless, the deemed contract will need to continue to apply in cases where a customer does not opt to switch. It will also need to continue to apply where a customer is subject to further transfers following the initial exit (i.e. through acquisition or merger with another licensee).

5.10 The framework we put in place for securing price terms in the deemed contract through the exits regulations will therefore need to stand the test of time. It is not yet clear how this market will develop. Our broad expectation is that the requirement for price protection will diminish over time, as customers opt to move onto contracts that better suit their particular needs. Some commentators would argue that there is no need for any form of price protection in a competitive market. Others would suggest that some form of backstop protection will be important to enable customers to negotiate the best deal. It is possible that different classes of customers may have different requirements in this regard. For example, the evidence from other markets suggests that some SMEs have a lot in common with households in the way they engage in the market,⁶ and may find it more difficult to negotiate advantageous terms than some larger businesses.

5.11 **The Government therefore proposes to place a requirement on Ofwat to keep the need for price protection for non household customers under review as the market develops.** The exit regulations would require that the regulator makes recommendations regarding the price terms that must be secured through the deemed contract alongside the price review methodology. In doing so, they will be expected have regard to the needs of different classes of customers and to ensure equivalent levels of protection for the customers of undertakers and the customers of acquiring licensees. This policy principle will also be addressed through our forthcoming charging guidance to Ofwat.

⁶ See e.g. Federation of Small Businesses, *Small Businesses As Consumers: Are They Sufficiently Well Protected?* (2014): http://www.fsb.org.uk/policy/assets/fsb%20project_small_businesses_as-consumers.pdf.

Q5: From Market Opening to 2020 do you agree that the deemed contract should include price terms which are identical to those that the customer was receiving from its water undertaker at the time of the retail exit?

Q6: If we work on the assumption that the transferred customers of an exited undertaker should have a deemed contract that includes a clear set of price terms, what factors do you think should be taken into account when establishing those terms post 2020?

6. Non-price terms

What's the issue?

6.1 There has been a consensus throughout this process that all customers need to be assured that they will receive a good retail service following an exit. This assurance will be particularly important to those customers that are not active in the market. In addition, both customers and licensees will require a clear basis for a shared understanding of the terms of their commercial relationship, setting out roles and responsibilities on both sides. This will need to address a baseline set of expectations in terms of meter reading, billing, payment, debt management, termination of agreement etc. At present, such terms are secured through the legislative powers and duties which apply to undertakers, including through the retail elements of GSS. A switching customer will agree a contract that will cover these issues and would retain the right to switch back to the undertaker at any point. However, this would not be the case for a customer that was transferred following an exit.

Proposed approach

6.2 **The Government proposes that the deemed contract that is applied to all customers of licensees that have not chosen to switch should set out a clear set of essential non-price terms.** We anticipate that the deemed contract would need to set out a clear set of expectations of both licensees and customers.

6.3 The Water White Paper set out the Government's commitment to ensure that all retail customers receive a minimum acceptable standard of service by extending GSS to all licensees. The Water Act 2014 includes powers for ministers to apply GSS to licensees as well as undertakers, based on recommendations from Ofwat.

6.4 In addition to the published requirements set out in GSS, there is a range of practice across the industry, including both formal and informal arrangements with individual customers. There is a question therefore regarding the correct balance between requiring the transfer of individual arrangements and the creation of a transparent set of

contractual arrangements. The expectation is that any pre-exiting contractual arrangements between the customer and the undertaker should be passported across as part of the transfer arrangement (subject to the caveats noted in 8.8 above to address cases where an undertaker has set tariffs unsustainably low).

6.5 The exit regulations will require that Ofwat develop a revised set of GSS for market opening. In identifying non-price terms for inclusion in the template deemed contract we anticipate that Ofwat will cross refer to the standards set out in the revised GSS. In doing so it will need to identify a core suite of contractual terms which are reflective of acceptable practice within the sector. We anticipate that Ofwat will need to undertake research and consult on the content of revised GSS over the **summer and autumn 2015**. We expect to lay the new GSS regulations at the common commencement date in **April 2016** in order to inform the development of the exit regulations.

Q7: How could we make our approach to setting non-price terms more effective?

Q8: What do you think the revised GSS should include?

Q9: Are there any non-price terms that do not form part of the GSS that you would expect to see included in the deemed contract?

7. Roles and responsibilities of undertakers and licensees

What's the issue?

7.1 The exit regulations will need to address the roles and responsibilities of both undertakers and licensees operating in the reformed retail market. Allowing retail exits will enable a greater diversity of licensees to enter the retail market. For example, some licensees may wish to specialise in providing niche or specialist services, while others might wish to take on large-scale customer transfers. Others may also want to provide services only to their own premises and those of their associates (e.g. under a tailored self-supply licence). As a consequence, the regulatory framework will need to be sufficiently flexible to reflect this diversity of market participants.

7.2 Exit will require the removal of certain powers and duties from the undertaker. Some of these responsibilities will need to be adopted by the acquiring licensee and the acquiring licensee will need to be able to demonstrate that they have the capability to meet these requirements. It is clear that enabling exit for undertakers must not come at the cost of creating material barriers to entry for licensees that wish to grow organically or whose

preferred business model involves remaining relatively small. At the same time, the success and credibility of the retail market will require all market participants to meet certain standards of capability.

Proposed approach

7.3 When considering an exit application, the Secretary of State will need to be assured that an acquiring licensee has sufficient capacity and capability to deliver a high quality service to all transferred customers. **The Government therefore anticipates that Ofwat's approach to licensing will sufficiently flexible to accommodate a diversity of licensees – and in particular to reflect the potential differences of scale between acquiring licensees and other forms of new entrant.**

7.4 Defra and Ofwat are working closely together on preparations for retail market opening. Ofwat will recommend a detailed approach to licensing over the coming months. This will include transitioning existing licensed water suppliers to the new licensing regime. The Secretary of State is required to consult on standard licence conditions prior to publishing them. Subject to delivery by Ofwat, we propose to consult on these conditions in **summer 2015**, alongside the consultation on the draft exit regulations, and to publish the final licence in **December 2015**.

Q10: Do you agree that there should be different requirements for licensees that are looking to take on large-scale customer transfers compared with licensees that wish to specialise in providing services to a niche class of customers?

Q11: What differences do you think it would be reasonable to see in the licensing regime in terms of capacities and/or capabilities between acquiring licensees and smaller entrants?

8. Subsequent transfers

What's the issue?

8.1 At the point of exit, undertakers will transfer the entirety of their non-household customer base to one or more licensees. Following the initial exit, experience from other sectors suggests that further customer segmentation may take place through a process of mergers, acquisitions and transfers between licensees. Some licensees will seek to specialise in serving specific classes customers while others will wish to maximise economies of scale by serving large numbers of customers. In this way segmentation can increase customer choice in the market.

8.2 A consistent message from the process of stakeholder engagement to date is that it will be essential for the credibility of all market participants that customers have a positive experience of interacting with the market. This will be particularly important where the customer has not made an active choice to engage in the market but has been transferred either as the result of an initial exit or as the result of a subsequent transfer. Particular care will need to be taken in the case of customers that are transferred in this way more than once.

Proposed approach

8.3 The Government will ensure that all transferred customers remain protected following both an initial exit and any subsequent transfers. **The Government proposes that any customers that have been transferred, without having negotiated terms with an undertaker before an exit, will transfer on the terms set out in the deemed contract.** This will mean that both the price and non-price terms set out in the deemed contract will continue to apply to the customer until such point as they choose to switch or renegotiate.

Q12: Do you agree that a transferred customer should remain on the deemed contract until they choose to switch to a negotiated contract or another licensee – even if they are transferred on more than one occasion? What do you think are the main advantages and disadvantages of this approach?

9. Switching customers' rights to deemed contract terms and conditions

What's the issue?

9.1 At market opening all non-household customers will have the right to switch suppliers. The customers of an undertaker will always have the right to switch to an alternative licensee and to switch back to the undertaker on the default tariff (or whatever price terms follow this from 2020). However, once an undertaker has exited, this additional layer of protection will be removed. One interpretation of the principle of equivalence would be that all licensees should always be required to accept any customer that they had previously acquired as part of a transfer on the deemed contract terms.

9.2 The attraction of this approach is that it would ensure that all customers could be encouraged to engage in the market, knowing that they could return to the terms and conditions set out in the deemed contract if they were unhappy with their choice of retailer. The risk of this approach is that it would increase the levels of complexity and bureaucracy

associated with the market, which could ultimately have a chilling effect. While it is easy to see how this protection could be extended to a customer following a single transfer, it is much harder to see how this could be maintained many years down the line, potentially following multiple transfers and switches.

Proposed approach

9.3 The Government wishes to see the development of a well functioning competitive market and considers that this is likely to provide a better deal for customers than additional layers of regulation. We want to ensure that customers feel confident to engage with the market without creating legacy arrangements that could have long-term implications for retailers. In order to address both of these concerns, **the Government proposes that, for two years following a transfer, customers will have the right both to switch away from the acquiring licensee and to return to them on the deemed contract terms and conditions at any point during that two year period.**

9.4 This would apply to any customers transferred directly following an exit or through any subsequent transfer. After these two years have elapsed, the customer will have the same rights to switch to that licensee as anyone else but they will not have any statutory right to do so on the deemed contract terms and conditions. The aim here is to encourage transferred customers to engage in the market by extending some of the protections that they would have had with the undertaker for a time-limited period. However, the Government also wishes to place reasonable limits on any long-term legacy of different requirements applying to different customers.

9.5 Any licensee that wishes to exit during this two year period will, of course, be free to do so. Like any exiting licensee, they would be required to make all best efforts to identify an alternative licensee to take those customers on the same terms and conditions. Failing this, they would be free to trigger the Supplier of Last Resort Regime set out in section 13 below.

Q13: Do you agree that customers should retain the right to return to their acquiring licensee on the deemed contract terms and conditions for two years following a transfer?

Q14: How far you agree that this protection should be time-limited? What do you think is a reasonable time-frame?

10. New connections and new owners/occupiers in exit areas

What is the issue?

10.1 Currently, all customers that request a new water and/or sewerage connection from the local undertaker are guaranteed to receive both a retail and wholesale service from that undertaker. Similarly, new owners and occupiers of previously unoccupied or disconnected premises within that area can rely on their undertaker to provide services when they need a water supply. Following an exit, the undertaker will no longer be able to provide retail services to these customers (although they will still be responsible for laying the pipes, making the physical connection and for providing the wholesale service).

10.2 In most cases, a customer that requires a new connection or a re-connection will voluntarily identify a licensee to provide retail services. This customer will ask the licensee to liaise with the undertaker to organise a new connection or re-connection on their behalf and subsequently to provide them with retail services. However, this may not be the case in every instance. We therefore need to create a framework that will ensure that all customers in these circumstances receive a retail service.

Proposed approach

10.3 New customers in an exited area must always be able to connect to the network and to access a retail service even if they do not identify a licensee themselves. **The Government therefore proposes to introduce a “supplier of first resort” panel across England, that is, a pool of licensees that will be available to take on new customers following an exit.** A similar provision would be introduced for customers moving into previously unbilled or disconnected premises connected to networks within an exited undertaker’s area of appointment.

10.4 All acquiring licensees will be required to join the panel and become suppliers of first resort unless they are self-supply licensees or have another good reason not to do so. Licensees that wish to specialise in providing niche services will be able to apply to Ofwat to opt out of the regime. Ofwat will be responsible for establishing transparent criteria

against which they will judge such an application. We anticipate that Ofwat will publish these by **February 2016** in order to feed into work on the deemed contract. The Government's broad expectation is that any licensee that chooses to acquire a substantial customer base through an exit will form part of the panel. This approach will ensure that there are a sufficient number of licensees on the panel for it to function properly while securing diversity in the market by enabling small and niche licensees to offer specialist services.

Q15: Do you agree that we should introduce a “supplier of first resort” panel across England that will be available to take on new customers following an exit?

Q16: Can you think of any ways in which we could refine our approach to new connections and new owners/occupiers in exit areas to make it more effective?

11. Supplier of last resort regime

What is the issue?

11.1 Currently, the customers of a licensee that has exited the market—for example, because of insolvency—are automatically transferred to the local undertaker under the supplier of last resort regime (“SoLR”). This continues for three months or until the customer makes arrangements for a more permanent supply arrangement to be put into place. For example, the customer can formally request to continue to receive retail services from the undertaker or they can identify an alternative licensee. If this does not happen, after three months has passed, it is expected that the undertaker would put the customer onto a formal contract.

11.2 Sections 31 and 32 of the Water Act 2014 introduced a reformed SoLR regime for the water supply licensing regime and an equivalent for the new sewerage services regime. Under the reformed regime, the undertaker is retained as the default supplier of last resort. However, Ofwat also has the power to direct a licensee to take on these customers instead of the undertaker on an interim basis for three months—or until more permanent retail arrangements can be put into place. The Water Act 2014 also enables any licensee to opt into the SoLR regime should they choose to do so. Following an exit, the undertaker will no longer be able to provide retail services to the customers of a licensee that has exited the market. The legislation does not currently provide for this situation so alternative arrangements will need to be put in place through the exits regulations to secure a default supplier of last resort in areas where the undertaker has exited.

Proposed approach

11.3 As a point of principle, customers of a licensee that has exited the market must continue to be able to access a retail service in the same way as any other customer. **The Government therefore intends to require at least one acquiring licensee in every transfer to opt into the SoLR regime.** As with the supplier of first resort regime set out in section 13 above, acquiring licensees that only hold self-supply licences or wish to specialise in providing niche services will not be required to opt in where they have a compelling case for not doing so. Ofwat will be required to publish transparent criteria against which they will judge a licensee's request not to opt in. We anticipate that Ofwat will publish these by **February 2016** in order to feed into work on the deemed contract.

11.4 Before an exit application can be granted at least one acquiring licensee will be required to opt in. Additionally, all other licensees operating in the retail market will also be welcome to opt in to the regime, as is currently the case under the Water Act 2014. This approach derives from the same point of principle as the previous section but it will need to be designed slightly differently to accommodate the regime that is already in place.

Q17: Do you agree that we should require at least one acquiring licensee in every transfer to opt into the supplier of last resort regime?

Q18: Can you think of any ways in which we could refine our approach to the supplier of last resort regime to make it more effective?

12. Applications process and exit criteria

What's the issue?

12.1 A key requirement of this project is to design an applications process that meets the needs of all market players. We will need to strike the correct balance between the requirements we opt to impose via the applications process and those that we secure through the broader regulatory framework.

12.2 Undertakers will be able to exit the retail market with the consent of the Secretary of State. As part of the applications process, the Secretary of State will require clear assurances that certain requirements have been fulfilled. We will wish to avoid any risk that the process could become bureaucratic or create unnecessary duplication with activity (such as licensing) that we see as being for the regulator rather than the Secretary of State to drive.

12.3 We will also need to ensure that the applications process opens as soon as is feasible following the conclusion of the parliamentary process so that we can give certainty for market participants and, in particular, undertakers that wish to exit the market.

Proposed approach

12.4 The Government is committed to implementing a simple, light-touch applications process that provides maximum certainty for all market participants without introducing undue burdens on undertakers and licensees. **The Government therefore proposes to introduce a clear framework of requirements that apply equally to all parties as opposed to bespoke conditions that are specific to individual companies or individual exits.** This will mean that safeguards will primarily be secured through the wider regulatory framework—for example; codes, licences, GSS etc.

12.5 The key elements of this framework are set out elsewhere in this document. This approach requires that we establish a set of expectations that apply equally to all divesting undertakers and a parallel set that apply to all acquiring licensees. By creating such a universal framework we will be able to avoid the uncertainty that would come with a process that allows for more bespoke conditions to be applied to individual exit applications. The strong benefits of this approach will be transparency for both customers and exit applicants regarding their reasonable expectations. The constraints of this approach are that it will limit our capacity to develop regionally specific exit requirements.

12.6 In light of our preference for a simple, light-touch applications process, we anticipate that the Secretary of State will take an exit decision based on a number of assurances from applicants. This will enable the Secretary of State to grant consent without the need for an unduly detailed, burdensome applications process. **The Government anticipates that the Secretary of State will require applicants to provide assurances demonstrating that they meet the following criteria:**

- that the exit is being undertaken voluntarily; and
- that both parties to the transfer have taken appropriate steps to ensure compliance with the regulations governing exit.

12.7 The Secretary of State will also need to be assured:

- that there will be a continuous retail (and wholesale) service following the exit;
- that both parties will take appropriate actions to ensure that customers are informed about how the transfer affects them, their rights and choices open to them; and
- that the new licensee(s) will meet certain standards in terms of service and price.

Further information about the indicative timeline for the applications process is included in section 17.

Q19: Are there other issues that we should consider in our suggested approach to the applications criteria and process?

13. Customer communications

What's the issue?

13.1 The Government wants all customers that are transferred as a result of exit to have a positive experience of the process. Effective customer communication is a key tool for delivering this outcome. Participants in both the retail exits workshop and the stakeholder contact group emphasised the importance of customer communication to increase the chance that customers will be happy following the transfer. It is worth remembering that any customer that is unhappy with the transfer will always have the option of switching their retail service provider.

Proposed approach

13.2 We will require undertakers and licensees to communicate with customers at specified points in the application process. This requirement will be secured using the Secretary of State's exit criteria (see 15.6 and 15.7 above). **The Government will therefore require undertakers and licensees to communicate with customers at the following points in the application process:**

- Before the transfer: The exiting undertaker will be required to contact customers to explain what is happening and why; that customers have a choice about whether to switch their supplier; and directing customers to further information about the market.
- After the transfer: The acquiring licensee will be expected to contact the customer to confirm that the transfer has occurred and lay out billing information, service levels etc. for the coming period.

13.3 Information about the process for enabling exits and the options for customers both before and after a transfer will need to be provided in a co-ordinated way by all interested parties including Government, Ofwat, Open Water and CCWater.

Q20: Do you agree that we should require both undertakers and licensees to communicate with transferred customers?

Q21: Are there any additional issues that we should consider in our approach to customer communications?

Q22: Do you have any other comments about our overall policy approach to retail exit?

Q23: Is there anything else you would like to add to your response?

14. Timetable

14.1 The Government is committed to ensuring that any undertaker that wishes to exit the retail market is able to do so from the point at which the retail market opens in **April 2017**, subject to meeting certain criteria. We recognise that any undertakers wishing to exit at market opening will need clarity regarding the outcome of their exit application well in advance of that date in order to prepare for the transfer of customers. Early clarity will be equally important for the acquiring licensees.

14.2 We are working to a challenging timetable so that we can provide this clarity as early as possible. We plan to publish the summary of responses to this consultation in **May 2015**; following this, we will consult on the draft regulations in **Summer 2015**. During the passage of the Water Bill, the Government made clear commitments to consult thoroughly on these draft regulations and, in particular, to engage effectively with all interested Parliamentarians.

14.3 Once we have considered the responses to this second consultation, we plan to lay the revised regulations in **early Summer 2016**. These regulations will be debated by Parliament. We will open the applications process immediately following the completion of the parliamentary process.

Indicative timeline to 2017

14.4 The timeline below is provided for illustrative purposes in order to inform your input on this section. More detailed milestones will need to be developed in partnership with Ofwat and Open Water in the context of the wider programme for delivering retail market opening.

February 2015 - Ofwat to consult on the removal of the standard condition on in-area trading from the Water Supply Licence

Summer 2015 - Defra to consult on draft exit regulations

- Summer 2015**
 - Defra to consult on draft licence (produced by Ofwat)
 - Defra to consult on draft exit applications process
 - Ofwat to consult on content of deemed contract
- Autumn 2015**
 - Ofwat to consult on revised content of GSS
 - Defra to publish final licence (produced by Ofwat)
 - Defra to publish exit applications process and criteria
- February 2016**
 - Ofwat to publish criteria for opt-in/out of SoLR and supplier of first resort
- March 2016**
 - Ofwat to publish draft deemed contract
- April 2016**
 - Defra to lay revised GSS regulations
- May 2016**
 - Applications for licence open
- October 2016**
 - Ofwat to issue licences ahead of market opening
 - Defra opens exits applications process
- December 2016**
 - SofS announces exits decisions ahead of market opening
- April 2017**
 - Retail market opens

15. How to respond

15.1 The consultation period will run from Wednesday 10 December 2014 to Wednesday 18 February 2015. You can respond online at www.gov.uk/defra. You can also respond via email to: RetailExitsConsultation@defra.gsi.gov.uk. The postal address for responses is: Water Reform team, Area 3B, 17 Smith Square, London SW1P 3JR. Please make sure your responses reach us by Wednesday 18 February 2015.

16. Summary of consultation questions

1. Do you agree that we should seek to secure equivalence between customers that have been transferred following an exit and customers who are still served by an undertaker that has not chosen to exit the market—and, if so, why?
2. Are there circumstances in which you think this might prove difficult to achieve? If so, how could we best approach this?

3. Do you agree that there should be a deemed contract in all instances where a non-household customer is served by a licensee but has not negotiated a contract with that licensee—and, if so, why?
4. What terms do you think should feature in the deemed contract?
5. From Market Opening to 2020 do you agree that the deemed contract should include price terms which are identical to those that the customer was receiving from its water undertaker at the time of the retail exit?
6. If we work on the assumption that the transferred customers of an exited undertaker should have a deemed contract that includes a clear set of price terms, what factors do you think should be taken into account when establishing those terms post 2020?
7. How could we make our approach to setting non-price terms more effective?
8. What do you think the revised Guaranteed Service Standards (GSS) should include?
9. Are there any other non-price terms that do not form part of the GSS that you would expect to see included in the deemed contract?
10. Do you agree that there should be different requirements for licensees that are looking to take on large-scale customer transfers compared with licensees that wish to specialise in providing services to a niche class of customers?
11. What differences do you think it would be reasonable to see in the licensing regime in terms of capacities and/or capabilities between acquiring licensees and smaller entrants?
12. Do you agree that a transferred customer should remain on the deemed contract until they choose to switch to a negotiated contract or another licensee – even if they are transferred on more than one occasion? What do you think are the main advantages and disadvantages of this approach?
13. Do you agree that customers should retain the right to return to their acquiring licensee on the deemed contract terms and conditions for two years following an transfer?
14. How far do you agree that this protection should be time-limited? What do you think is a reasonable time-frame?
15. Do you agree that we should introduce a "supplier of first resort" panel across England that will be available to take on new customers following an exit?
16. Can you think of any ways in which we could refine our approach to new connections and new owners/occupiers in exit areas to make it more effective?

17. Do you agree that we should require at least one acquiring licensee in every transfer to opt into the supplier of last resort regime?
18. Can you think of any ways in which we could refine our approach to the supplier of last resort regime to make it more effective?
19. Are there other issues that we should consider in our suggested approach to the applications criteria and process?
20. Do you agree that we should require both undertakers and licensees to communicate with transferred customers?
21. Are there any additional issues that we should consider in our approach to customer communications?
22. Do you have any other comments about our overall policy approach to retail exit?
23. Is there anything else you would like to add to your response?

17. Glossary

Acquiring licensee – A licensee that has acquired transferred customers after an undertaker has exited the retail market.

Associate licensee – A separate legal entity that has been established by an undertaker so that it can participate in the retail market. This term is used to distinguish these licensees from the licensees set up by new businesses entering the market and from the in-area non-household retail arms of undertakers.

Codes – The mechanism by which Ofwat will regulate the various agreements that undertakers make with other parties in the new competitive markets.

Deemed contract – A contract that is deemed to apply between any non-household customer and the licensee that serves them where the customer has not negotiated a separate contract with that licensee.

Default tariff – Price protection that all undertakers will be required to offer their non-household customers from April 2015.

Exit regulations – Any regulations made by the Secretary of State under the powers in Chapter 4 of Part 1 of the Water Act 2014.

Exited area – The area of appointment of an undertaker that has exited the retail market.

Exited/exiting undertaker – An undertaker that has voluntarily exited the non-household retail market.

Guaranteed Service Standards (GSS) – Statutory standards of performance that undertakers must meet when providing services for customers. In the retail context, this includes response times for written complaints, meeting appointments etc.

In-area customers – Non-household customers with premises in the undertaker's area of appointment.

Licensee – An entity that is licensed to provide retail services to the end customer in the competitive market. This includes an associate licensee set up by an undertaker as well as a licensee that is set up by new businesses entering the market. This document also uses the term “retailer” to refer to these entities.

Outsourcing – Where an undertaker outsources the provision of retail services to another body, while still retaining the ultimate statutory responsibility for providing these services.

Retail – Customer-facing services, for example billing, meter reading and call centre services. The full list of retail services for the purposes of the competitive market is outlined in the Ofwat price review methodology.

Retailer – An entity that is licensed to provide retail services to the end customer in the competitive market. This document also uses the term “licensees” to refer to these entities. The term “retailer” can also be used to mean the retail arm of an undertaker that has not exited the market but is not used in this sense in this document.

Retail exit – Where an undertaker exits the competitive part of the retail market with the consent of the Secretary of State. This reform will mean that those undertakers choosing to exit the non-household retail market will be able to transfer their non-household customers to a licensee and that various legal duties relating to the provision of retail services to such customers will be modified or removed.

Self-supply licensee – A customer with a water supply or sewerage licence that provides retail services to its own premises and those of its associates (for example, subsidiaries or partners).

Supplier of First Resort – A licensee who is assigned any non-household customer that arises in an exited area and has not chosen an alternative licensee themselves.

Supplier of Last Resort – A licensee or undertaker who is assigned the non-household customer(s) of a licensee that has left the market, where those customers have not chosen an alternative licensee themselves.

Switch – Where a non-household customer chooses to switch from either their undertaker or an acquiring licensee to another licensee for the provision of certain retail services. From April 2017, the expansion of retail competition will mean that all non-household customers will be able to switch their retail service provider—whether or not their undertaker has chosen to exit the retail market.

Transfer – Where an undertaker that has chosen to exit the market transfers their non-household customers to an acquiring licensee. This can also include the transfer of asset, e.g. a call centre lease and staff.

Transferred customer – A customer that has been transferred to an acquiring licensee in an undertaker’s area of appointment after the undertaker has exited the retail market.

Undertaker – A company that has statutory powers and duties to supply water and/or sewerage services to premises within an appointed geographical area under the Water Industry Act 1991. It is also responsible for maintaining and operating the public water supply and/or sewerage networks.

Water Act 2014 – A piece of primary legislation that amended the Water Industry Act 1991 to expand retail competition. It also contains a broad enabling power to make regulations that will allow undertakers to apply to the Secretary of State to exit the non-household retail market.

Wholesale – The inputting of water to, or the removal of sewage from, the network. This does not include distribution services.

Water Industry Act 1991 – This is the main piece of primary legislation that concerns the regulation of the water industry, including water and sewerage services.



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