



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Consultation on Draft Regulations: ‘The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations’

July 2015



© Crown copyright 2015

You may re-use this information (excluding logos) free of charge in any format or medium, under the terms of the Open Government Licence v.3. To view this licence visit www.nationalarchives.gov.uk/doc/open-government-licence/version/3/ or email PSI@nationalarchives.gsi.gov.uk

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at:

RetailExitsConsultation@defra.gsi.gov.uk

Contents

1. Introduction	1
What are we seeking to achieve?	2
Choices for water companies	3
The regulations	3
The applications process.....	3
What happens next?	4
How to respond	4
2. Summary of the regulations	5
Part 1- Citation, commencement and interpretation etc	5
Part 2 - Exit applications.....	6
Part 3 - Transfer of undertaking	9
Part 4 - Effect of exit.....	11
Parts 5 & 6 - Identifying a water supplier in a retail exit area & Identifying a provider of sewerage services in a retail exit area	13
Part 7 - Consequential amendments and review.....	16
3. Issues not currently covered by the regulations	17
Mergers between an un-exited undertaker and an exited undertaker	17
4. Issues covered elsewhere in the Market Architecture.....	19
The Market Codes.....	19
The Licence.....	19
Default Tariffs.....	20
Guaranteed Service Standards	20
Code on Miss-selling	20
Deemed contracts	21
Removal of the in-area trading ban and associated licence conditions	21

5. Glossary.....	22
Annex A - Application to the Secretary of State to withdraw from the non-household retail market.....	25
A. Applicant details.....	25
B. Reasons for exit application.....	26
C. Information about acquiring licensee(s).....	27
D. Information about proposed exit arrangements	28
E. Customer notification of an exit.....	29
F. Ensuring a seamless process for customers.....	31
G. Supplier of first resort and last resort regimes	32
H. Declaration	34
Annex 1 – Letter of support from acquiring licensee(s)	35
Annex 2 – Additional acquiring licensee (s).....	36
Annex B – Retail Exit Assumptions.....	38

1. Introduction

1.1 The Water Act 2014 (“WA14”) received Royal Assent on 14 May 2014. It enabled reform of the water sector, including by extending the scope for competition in the market for non-household retail services. During the passage of the Water Bill, the Government brought forward amendments designed to enable companies to voluntarily exit the retail market (‘retail exit’). The Government is committed to ensuring that undertakers who wish to exit the market can do so when the retail market opens in April 2017.

1.2 The exit provisions in the WA14 enable the Government to introduce regulations that allow undertakers to exit the competitive part of the retail market with the consent of the Secretary of State. Those companies choosing to exit the non-household retail market will be able to transfer their non-household customers to a licensee. The various legal duties relating to the provision of retail services to such customers will be removed or revised from the exiting company. It was recognised in the parliamentary debates during the passage of the Bill that the detailed policy on how to implement the exit provisions would need to be developed in consultation with all interested parties.

1.3 Following Royal Assent of the WA14 we undertook a process of detailed engagement with the water industry, consumer groups and Ofwat to inform the development of the policy on exits. This involved:

- Engagement through the Water UK council and public affairs network.
- Engagement with business customers through the CCWater Business Customer forum and the Major Energy Users Council.
- Publication of a discussion document setting out the high-level principles underpinning our approach to exits policy, supported by a workshop involving a wide cross section of stakeholders in July 2014.
- Creation of a stakeholder contact group, consisting of undertakers, retailers, customer bodies and Water UK.
- Regular bi-lateral engagement with companies, customer groups and the regulator.

1.4 On 10 December 2014 we published a consultation on the retail exits policy which ran until 18 February 2015. Respondents to the consultation were supportive of our policy approach. A Summary of Responses and a Government Response to the consultation will be published alongside this document.

1.5 The purpose of the current consultation is to gather views on the detail of the draft regulations and the applications process. It follows the Government’s commitment to Parliament, made during the debates on the Water Bill, to consult widely on the exit regulations before they are laid in Parliament. The Government wants to ensure that all interested parties have the opportunity to comment on them. In light of this commitment we will be running the consultation for a full 12 weeks.

What are we seeking to achieve?

1.6 The scope for the retail exits policy was 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.

1.7 Drawing on input from stakeholders, we have already published a set of high-level policy assumptions that underpin our proposed approach to retail exits. These are set out at Annex B.

1.8 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. 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.

1.9 In enabling exits, the Government wants to ensure that the customers of an exiting undertaker have access to the same standards of protection that they would have had if they had remained with the undertaker. For example, all customers must be assured of receiving both a retail and a wholesale service. 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 retail market underpins the Government's policy approach to exits.

1.10 The draft regulations achieve this by establishing the basis for:

- A **deemed contract** securing fair price and non-price terms for the transferred customers of an undertaker that has exited the market.
- A **Supplier of Last Resort** regime to address cases of insolvency
- A parallel **Supplier of First Resort** pool to ensure that new non-household customers in an area where the undertaker has exited can always secure a retail service.
- Requirements on both undertakers and licensees to communicate effectively with customers both before and after an exit takes place.

Choices for water companies

1.11 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.

The regulations

1.12 The WA14 provided a framework of enabling (primary) legislation, which allows certain reforms of the water sector. In order to implement these reforms, further more detailed secondary legislation, in this case the Retail Exits Regulations, is required. These regulations must then be laid in Parliament. This consultation covers the detail of the draft regulations which will put the policy on retail exits into effect. The regulations set out:

- The process that must be followed by companies wishing to exit the market for non-household retail services; and
- A lasting regulatory framework for customers and companies following an exit.

The applications process

1.13 The WA14 requires that the Secretary of State must grant approval in order for an undertaker to exit the retail market. We are therefore also consulting on the process for applying for exit. We would welcome your comments on the design of the draft exit application form. This is set out at Annex A.

1.14 The applications process needs to be fit for purpose for the long-term. However, the Government is aware that a number of companies may wish to exit at the point that the market opens in April 2017. These companies will want as much advance notice as is feasible in order to prepare for exit prior to market opening. In order to provide that advance notice, the Government is committed to opening the exits applications process as soon as possible, following the completion of the necessary Parliamentary processes. Subject to approval by Parliament, the applications process is expected to open on 3 October 2016. Applications for exit at Market Opening would need to be received no later than 1 November 2016. We would aim to announce exits decisions in early December 2016, four months ahead of retail market opening in April 2017.

1.15 The Government is committed to creating a light-touch process designed to allow undertakers that wish to exit the non-household retail market to do so, subject to meeting some simple and clearly defined criteria. Companies that meet these criteria can have a

high degree of confidence regarding the outcome of their application to exit and should feel able to plan on that basis.

What happens next?

1.16 This consultation is an opportunity for all interested parties to scrutinise and comment on the detail of the draft regulations for retail exit. The consultation will run from 23rd July for 12 weeks, ending on 15th October 2015.

1.17 Once the consultation has concluded, and we have amended the regulations in response to feedback, we will send the draft regulations to the Environment, Food and Rural Affairs Select Committee and other interested Parliamentarians. This will provide them with the opportunity to comment on them before they are finalised. We will subsequently lay the regulations in Parliament in May 2016 under the affirmative procedure. This will allow further Parliamentary scrutiny. The regulations, subject to Parliamentary approval, will come into force so as to allow for the submission of exit applications from 3 October 2016 and to allow retail exits to take place from market opening onwards.

How to respond

1.18 The consultation period will run from 23rd July 2015 to 15th October 2015. You can respond online at <https://consult.defra.gov.uk/water/retail-exits-regulations>. You can also respond via email to: RetailExitsConsultation@defra.gsi.gov.uk. The postal address for responses is: Retail Exits Consultation, Water Reform team, Area 3B, 17 Smith Square, London SW1P 3JR. Please make sure your responses reach us by 15th October 2015.

2. Summary of the regulations

2.1 The following sections of the consultation document provide an introduction to the draft regulations. They provide a summary of our policy objectives and flag points which may be of particular interest, or where there are still choices to be taken. However, these are not comprehensive and do not fully capture all the detail of the regulations. They are designed to complement, rather than substitute, an analysis of the regulations and we would encourage you to read the regulations in full alongside the following summary.

Part 1- Citation, commencement and interpretation etc

Citation and commencement

2.2 Part 1 of the regulations defines the key terms used in the regulations. Subject to the approval of Parliament, the regulations will come into force in time for the applications process to open on 3 October 2016 and exits to take place from April 2017 onwards. Companies will be able to receive notice of the Secretary of State's decision in relation to their application in advance of market opening. However, an exit cannot take effect before market opening.

Interpretation

2.3 Regulation 2 clarifies the boundaries of an 'exit area' and establishes how any cross-border premises will be considered. The exit area will predominantly reflect the exiting undertaker's area of appointment. However, some premises exist which are located in one undertaker's area of appointment but are connected to and served by an undertaker in another area. The draft regulations require that for the purposes of retail exit such cross-border premises are considered to be part of the retail exit area of the undertaker who is supplying them with services through their water or sewerage system. This reflects our long-standing policy position that an exit must be complete. Including these premises in the exit area will allow undertakers to exit completely from the non-household retail market. An alternative to this approach would be to update an undertaker's area of appointment prior to an exit. However this would add an additional process for companies ahead of market opening which would create further procedure and uncertainty.

The non-household retail market

2.4 Regulation 3 defines what a 'retail exit' is in legal terms and how this will be referred to throughout the rest of the regulations. This regulation refers to the function of providing water or sewerage services to non-household premises in order to make clear what is the effect of an undertaker withdrawing from the non-household water or sewerage retail market. The undertaker will cease to be required by law to provide specified customer-facing services such as billing customers, meter reading and dealing with customer

enquiries and complaints and will no longer be entitled to provide these services to current or future non-household customers within the exit area.

2.5 It should be noted that this refers to retail services only. It does not mean that an undertaker can cease to supply water and/ or sewerage wholesale services to non-household premises as part of a retail exit (i.e. piping water to those premises and taking away sewerage). An exited undertaker will retain all of their current statutory powers and duties with respect to the provision of wholesale services to both household and non-household customers (and likewise with respect to the provision of retail services to household customers) within their area of appointment.

Question 1: Do you agree that premises that are not located within an undertaker's area of appointment but are served by their water or sewerage infrastructure ('cross-border premises') should be considered part of that undertaker's exit area?

Question 2: Do you have any other comments on Part 1 (Citation, interpretation and commencement etc.) of the regulations?

Part 2 - Exit applications

2.6 Part 2 of the regulations outlines the application process, the information required for an application and how the Secretary of State must determine each application. These regulations reflect the approach to exit applications set out in our policy consultation. In this we outlined the Government's commitment to introducing a clear framework of requirements that apply to all companies, rather than a bespoke process with individual conditions for specific companies. The objective is to allow a simple and light touch application process which will provide maximum certainty for undertakers and licensees. Water companies supported this approach in their responses to the consultation – viewing it as a pragmatic and appropriate approach which would reduce uncertainty for companies and investors.

Power to make an exit application

2.7 Regulation 4 makes it clear that it is the exiting undertaker that must apply to the Secretary of State for permission to exit and that, for a Water and Sewerage company, the application must relate to both water and sewerage services.

Exit application to explain the reasons for wanting to exit

2.8 Regulation 5 requires an exit application to include the undertaker's reasons for wanting to withdraw from the non-household retail market. It provides an opportunity for applicants to highlight their rationale for wishing to exit this part of the market.

2.9 Our December 2014 consultation also made it clear that the Secretary of State would require assurance that there will be a continuous retail (and wholesale) service following an exit and that the acquiring licensee will meet certain standards in terms of

service and price. These are essential assurances which will be secured through the wider regulatory framework (particularly the licensing regime).

Exit application to identify acquiring licensees

2.10 Regulation 6 requires that an exit application must specify the name(s) of the prospective acquiring licensee(s) with which the undertaker has reached agreement regarding a customer transfer, subject to receiving permission to exit. This is necessary to allow us to check that the acquiring organisation holds the relevant licence. The Water Supply and Sewerage Licence (WSSL) will provide the Secretary of State with the essential assurance that the acquiring licensee has the sufficient technical competence, financial stability and managerial competence to serve the undertaker's former customer base.

2.11 This point is covered in Ofwat's recent licencing consultation¹ which sets out their proposed approach to the certificate of adequacy. This will ensure that the WSSL provides assurance where a licensee's circumstances undergo a significant change, including where a licensee is seeking to acquire a customer base following an exit.

Exit application to identify customers premises

2.12 Regulation 7 requires that an exit application must set out the premises that are to be transferred as the result of an exit. Where an undertaker is exiting to more than one licensee it must specify which groups of premises are to be transferred to which licensee. The expectation is not that the application should include a list of all the premises to be transferred but that applicants will make reference to the systems provided by the Market Operator for switching customers. It will be necessary to have a clear record of which customers have and have not been switched as the result of an exit in order to address any objections or appeals.

Exit application to specify an exit date & Power to change the exit date

2.13 Regulation 8 requires that an exit application must specify the date on which the exit is to take place. This must be at least five months from the date of application (unless the Secretary of State agrees otherwise).

2.14 Regulation 13 sets out the process by which an undertaker that has made an application may change the exit date by notifying the Secretary of State in writing. The purpose of this is to provide undertakers and acquiring licensees with flexibility in coming to an agreement. The revised date may be not more than two months later than the date first given.

¹ Ofwat's consultation on licensing and policy issues in relation to the opening of the non-household retail market can be found at: http://www.ofwat.gov.uk/competition/review/pap_con201506retaillicence.pdf?download=Download#

Notice of exit application

2.15 Regulation 9 requires that where an undertaker makes an exit application it must publish a notification on its website within one week. This notification must not be removed until after the exit date has passed or the application has been withdrawn. The purpose of this is for transparency and to ensure that customers have sufficient advance notice to take decisions about switching. At the same time the undertaker must inform both Ofwat and the Consumer Council for Water of their application to exit.

Power to require further information & Determination of application

2.16 Regulation 10 enables the Secretary of State to require the applicant to submit further information where necessary in order to support a decision about the application.

2.17 Regulation 11 sets out the basis on which the Secretary of State must make the decision about an exit application. The Secretary of State must grant permission for an exit unless this would be against the interest of the public at large or a section of the public. The Secretary of State may also refuse permission if the undertaker does not comply with the requirement to give notice under regulation 9. If further information has been required under regulation 10, the Secretary of State is not required to determine an application until the undertaker complies with that requirement.

2.18 In addition, regulation 11 also sets out the condition which the Secretary of State must impose when granting an exit application (the customer notification condition) and provides that other conditions may be imposed in respect of an exit application.

Customer notification condition of relevant exits

2.19 Regulation 12 sets out the customer notification condition which requires that, once an exit has been granted, the undertaker takes all reasonable steps to inform the customers that will be affected by the exit. This means telling customers:

- What is happening and why;
- Broadly, what terms and conditions will apply after the exit and where they can find out more;
- Contact details of the acquiring licensee;
- What will happen to any outstanding complaints;
- How they can engage with the market and, if they wish to, switch supplier.

2.20 This must happen at least two months before the exit date. Regulation 25 provides a similar obligation on licensees to contact customers after the exit. There was a range of responses received through the policy consultation on exits regarding the most appropriate form and timeline for customer communications ahead of an exit. These regulations seek to strike a fair balance with a focus on enabling customers to engage in the market. These are minimum standards which companies are free to exceed.

Modification or withdrawal of applications etc

2.21 Regulations 13 and 14 deal with changes that may occur after an undertaker has made an application to exit. These enable the undertaker to make changes to the proposed exit date and allow either party (the exiting undertaker or the acquiring licensee) to withdraw an application by writing to the Secretary of State announcing that they no longer wish to go ahead. Where this happens the Secretary of State is required to inform the other interested parties.

2.22 Regulation 15 addresses the possibility that either party might wish to withdraw after the exit has been granted but before the exit date. During this period, permission to exit will lapse if either party informs the Secretary of State in writing that they no longer wish to go ahead. Again, if this happens the Secretary of State is required to inform the other interested parties.

Question 3: Do you have any comments on our approach to exit applications as set out in the regulations?

Question 4: Do you think our approach to customer communications is appropriate and proportionate?

Question 5: What are your views on the draft exit application form (Annex A)?

Part 3 - Transfer of undertaking

2.23 Once the application process has been completed and permission to exit the market has been granted by the Secretary of State, the undertaker will need to transfer property, rights and liabilities to the acquiring licensee(s). Part 3 of the regulations outlines how such a transfer will work, makes provision for the transfer of outstanding complaints and information to the acquiring licensee and gives Ofwat the power to determine whether particular premises and customers have been transferred by the exit.

Transfer schemes

2.24 In order to facilitate this transfer, regulation 16 allows an undertaker with permission to exit to use one or more statutory transfer schemes to transfer its non-household retail business to the acquiring licensee(s). Statutory transfer schemes are a particularly useful vehicle for contracts which would normally be subject to termination or re-negotiation if one of the parties was to change. Transfer schemes are currently used in the special merger and special administration regimes, and the energy sector, and have proved a useful mechanism in these. Any transfer scheme used would need to comply with the rules set out in Schedule 1 to the exit regulations.

2.25 Given the benefits which statutory transfer schemes can provide, we have considered making it mandatory for undertakers to use these when transferring their undertakings as part of an exit. However, in the current draft of the regulations the use of a

statutory transfer scheme will be optional. The Government does not wish to be unduly restrictive or to prevent undertakers from identifying other methods which could produce a more commercially efficient outcome.

2.26 The one exception to this is for the transfer of special charging agreements, where we are proposing that the use of statutory schemes is mandatory. Transferring customers with special agreements is a particularly complicated matter. Our view is that the use of statutory transfer schemes will help customers who have negotiated a special charging agreement to be transferred to the acquiring licensee in a seamless manner without any changes to the terms and conditions in their contracts. We would particularly welcome your views on whether statutory transfer schemes should be optional, compulsory or a combination as we are currently proposing.

Transfer of outstanding complaints

2.27 Regulation 17 seeks to provide clarity about how customer complaints will be dealt with following an exit. Following an exit, all complaints will be dealt with by the acquiring licensee, even if they relate to the conduct of an undertaker prior to the exit date. Whilst this could appear counterintuitive, the basis for this approach is that dealing with customer complaints is a core retail function. If exited undertakers were required to continue to provide this retail service to non-household customers exit would not have been complete. Acquiring licensees will want to understand the liabilities that they are taking on before entering into a commercial arrangement with an undertaker around a retail exit.

Transfer of information

2.28 Regulation 18 specifies how information may be transferred between the undertaker and acquiring licensee to provide the acquiring licensee with the information it will need in order to provide an effective retail service. In practice most of this information will be held by the market operator. However, this provision has been included to provide clarity around the transfer of information, given that other Government legislation exists in the sphere of data and information management.

Determinations by the Authority

2.29 Regulation 19 provides Ofwat with powers to determine whether premises or a customer is eligible to be transferred as the result of an exit. Ofwat can do this where one of the interested parties applies for a determination.

Question 6: The regulations currently set out that the use of a statutory transfer scheme for transferring undertakings from an undertaker to an acquiring licensee as part of an exit will be optional, except for customers with special agreements. Do you agree with this?

Question 7: Do you have any other comments on Part 3 (Transfer of undertaking) of the regulations?

Part 4 - Effect of exit

2.30 Part 4 of the regulations outlines the legal consequences of an exit. This part sets out the changes that will be made to the statutory duties of the exited undertaker and acquiring licensee following an exit.

Prohibition on supply of water, or provision of sewerage services, by undertakers & Exiting undertakers may continue to supply their own premises & Exiting undertaker's ongoing responsibility for customers in the process of switching

2.31 Regulation 20 prohibits an exited undertaker from providing retail services to non-household customers. Regulations 21 and 22 make exceptions to this prohibition for the undertaker's own premises and for customers in the process of switching at the point of exit. These regulations reflect the underlying assumptions that exit must be:

- a) complete (e.g. the statutory duty to serve cannot be retained only for certain classes of non-household customers), and
- b) irreversible.

The language used in the regulations is that after the exit date the undertaker is: *'prohibited from supplying water or providing sewerage services to non-household premises in a retail exit area'*. It is important to emphasise that this reflects the language used in both the Water Industry Act 1991 ("WIA91") and the WA14 and that in this context it refers solely to the supply of retail services. Current legislation will continue to require undertakers to provide the wholesale services of supplying water and removing sewerage.

Modification of appointment of exiting undertaker & Modification of licence conditions of acquiring licensee

2.32 Regulation 23 provides Ofwat with powers to modify the conditions of appointment of an undertaker that has exited where this is necessary or expedient in consequence of the exit. Ofwat has one year following the exit to do this. There is corresponding provision in regulation 26 as respects the licence conditions of acquiring licensees.

Acquiring licensee's duty to continue supply & Acquiring licensee's duty to contact transferred customers

2.33 All water and sewerage customers must continue to receive both a retail and a wholesale service following an exit. In order to balance the removal of the undertaker's duty to provide retail services following exit, regulation 24 places a requirement on the acquiring licensee to provide the service. As noted above, regulation 25 requires an acquiring licensee to take reasonable steps to notify each customer they have received as a result of a transfer - setting out the terms and conditions to which they will be subject.

Schemes for terms and conditions & Code about supply of water or provision of sewerage services etc in retail exit area

2.34 The exit regulations are designed to ensure continuity of service to customers. However, we are not proposing to place acquiring licensees under the same statutory obligations as undertakers because these companies will be operating in a competitive market. Instead, we are proposing that acquiring licensees should operate under a light-touch regulatory framework that will secure a standard approach to the terms and conditions of transferred customers. These terms and conditions will cover both price and service. This is important because, unlike customers that have chosen to switch suppliers, customers transferred as the result of an exit won't have had the opportunity to negotiate a contract. Unless we secure the provision of some clear terms and conditions, both the customer and the licensee would lack this protection.

2.35 These regulations focus on one of the priorities in our December 2014 policy consultation, namely 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. The response to our consultation showed agreement around the need for a deemed contract due to the protection it will provide, and the clarity and confidence it will give to customers ahead of market opening. It is our proposal that all licensees wishing to operate in exit areas will publish deemed contract schemes on their websites. Ofwat will regulate the content of these schemes in order to ensure that they provide effective protection for customers and licensees.

2.36 Regulation 27 therefore requires that all licensees providing services in relation to a retail exit area must make and keep under review a scheme setting out the terms and conditions that will apply in all cases where these have not been negotiated with a customer on an individual basis. The scheme will apply to all customers in an exit that find themselves without a negotiated contract. It is our intention that the schemes will also apply to non-household customers that find themselves without formal contract (e.g. when a negotiated contract expires). These schemes must enable all customers transferred as part of the exit to be billed and make payments in the same ways that they were prior to the transfer. The schemes must be published and sent to Ofwat. This regulation also gives Ofwat a power of direction requiring that the scheme is modified to meet Ofwat's requirements.

2.37 Regulation 28 places a requirement on Ofwat to issue a code setting out the basis for schemes produced under regulation 27. This might, for example include a template 'deemed contract' for licensees to use as the basis for their published scheme. This section also gives Ofwat a power of direction to use in the event that it considers that a licensee is not acting in accordance with the code.

Question 8: These regulations seek to establish our policy objective of a deemed contract being in place following an exit for all customers who did not previously have a negotiated contract with their undertaker. Do you think that regulations 27 &

28 will secure adequate protection for both transferred customers and licensees following an exit?

Question 9: Do you have any other comments on Part 4 of the regulations (effect of exit)?

Parts 5 & 6 - Identifying a water supplier in a retail exit area & Identifying a provider of sewerage services in a retail exit area

2.38 Parts 5 & 6 of the regulations outline how customers can be assured of finding a supplier of retail services in an area where the undertaker has exited the retail market. Part 5 of the regulations relates to water and part 6 to sewerage services to reflect the structure of the relevant primary legislation. However, we discuss these parts together in this chapter as the regulations are nearly identical.

Identifying a new supplier where a customer has switched

2.39 In our December 2014 policy consultation we highlighted one area where respondents had raised concerns that achieving our 'principle of equivalence' might be challenging. The key points of this issue are:

- In an area where the undertaker chooses not to exit, customers will be free to switch supplier in search of a better deal and (subject to any continuing contractual commitments) would be free to switch back to the undertaker on the default tariff terms and conditions.
- However, where the undertaker has exited this would no longer be possible. A transferred customer would have the protection of the deemed contract terms and conditions up until they chose to switch.
- If they were not happy following a switch, customers would be free to shop around but could not be assured of accessing the deemed contract terms and conditions either with the original acquiring licensee or any other retailer.

2.40 In the December 2014 policy consultation, we proposed that for a two year period following a transfer customers would have the right to switch away from the acquiring licensee and then return to them on the deemed contract. The aim was to encourage customers to participate in the new market, knowing that they had the option of returning to the deemed contract terms and conditions. However, stakeholders were concerned that this could create undue complexity in the market, particularly over time as acquiring licensees merged or exited. We have reviewed the policy in response to this feedback.

2.41 The current draft regulations (29-33 & 44-48) propose an alternative to providing customers with time-limited rights to return to the licensee who acquired them as part of the exit. Instead, transferred customers who have switched away from the deemed

contract terms and conditions will retain the right to apply to Ofwat to be allocated to a licensee and placed on their deemed contract. Ofwat will then direct a licensee from a group of participating licensees (also known as the 'supplier of first resort' pool) to supply the customer on the deemed contract. This right will not be time-limited. These rights would not overturn any continuing contractual commitments but would retain the principle of equivalence between transferred customers and the customers of undertakers that had not chosen to exit.

Identifying a supplier where none can be found

2.42 In our December 2014 policy consultation, we set out the Government's view that all customers in an exited area must always be able to connect to the water and sewerage network and receive a retail service. Currently all new customers who request a connection or re-connection are guaranteed to receive both these services from the undertaker. However, once such an undertaker exits it will not be able to provide new or re-connected non-household customers with a retail service.

2.43 In most instances we anticipate that such customers will identify a retailer themselves by shopping around in the competitive market. However we recognise that this may not always be the case. The December 2014 policy consultation therefore set out the Government's proposal to introduce a 'supplier of first resort' (SoFR) pool in England which will form a pool of licensees able to take on new customers.

2.44 Regulations 34-43 and 49-58 set out the process by which new customers will be allocated a supplier if they do not identify one for themselves. Where an undertaker receives a request for a new non-household connection it must inform the customer making the request that it has exited the retail market and explain that the customer needs to arrange for a licensee to provide a retail service. If, after 22 working days, the undertaker has not received notification that a licensee has agreed to serve the premises, it must notify Ofwat. Ofwat will direct an 'eligible licensee' (a licensee participating in the SoFR pool) to take on the new customer. The period of 22 working days has been chosen to reflect the latest industry thinking on the time required for a customer to identify a new supplier and to make this consistent with the process for dealing with gap sites across the whole country in the MAP codes.

2.45 The regulations provide that the licensee directed to serve the new customer must do so on the deemed contract; unless the customer has negotiated a contract with the licensee. We have included this provision so that new customers will always have a right to be served on the deemed contract. Licensees may be able to offer customers a more attractive and tailored package through a negotiated contract and the Government does not wish in any way to prevent this from happening.

2.46 Regulations 36 & 51 require undertakers to proceed with making the necessary physical connections for supply even if there is no licensee in place yet to serve the customer. The Government considers this an important requirement since it will ensure

that all customers are able to access the water and sewerage network. It will also secure equivalence between new customers in exit areas and in non-exit areas.

List of eligible water supply / sewerage licensees and Guidance about directions and lists

2.47 Regulations 41 and 56 require Ofwat to maintain a list of eligible water and sewerage supply licensees (or SoFR pool) for exit areas. Regulations 42 and 57 require Ofwat to publish guidance about how it will use its powers to direct licensees to provide retail services to customers and how it will maintain the relevant lists of eligible licensees. The purpose of these regulations is to ensure that an adequate pool of suppliers is developed and that new customers are allocated between licensees in a fair and transparent way which will support the operation of the new market.

2.48 All acquiring licensees will be required by regulations 41 and 56 to join the SoFR pool unless they are a self-supply licensee or have good reason not to do so. It is our intention that all acquiring licensees will also be required to join the supplier of last resort panel with the same exceptions and we plan to incorporate this requirement into the final version of the regulations.

2.49 At present the regulations (see regulations 41(2)(a) and 56(2)(a)) exclude only self-supply licensees from the regimes. However, we will review the regulations to ensure that other acquiring licensees (such as niche licensees) are also able to opt out, should Ofwat consider them to have a valid reason for doing so.

2.50 We want to ensure that both the SoLR and SoFR mechanisms in an exit area remain fit for purpose for the long term. For example, following subsequent customer transfers or mergers involving acquiring retailers. We are, therefore, considering providing Ofwat with additional powers to monitor the sustainability of both the SoFR pool and SoLR panel and to direct any licensee to join either one or both should they consider it necessary.

Question 10: How far do you agree with our new proposals on switching customers' rights to deemed contract terms and conditions?

Question 11: Can you see any ways to improve these proposals and reduce administrative complexity further?

Question 12: Do you agree with the approach for identifying a provider for water and sewerage services in a retail exit area?

Question 13: Are there any further points which you would like to make about Parts 5 (Identifying a water supplier in a retail exit area) & 6 (Identifying a provider of sewerage services in a retail exit area)?

Part 7 - Consequential amendments and review

Consequential amendments

2.51 Schedule 2 makes the changes which are needed to WIA91 as a result of the exit regulations. The main objective of these is to remove undertaker's rights to serve non-household customers eligible to be served by a licensee when the undertaker has exited the market. It also seeks to ensure that exited undertakers are still able to provide a full range of services required under WIA91. This is particularly in situations where households in exited areas require non-domestic supplies, or where non-households are primarily using water and sewerage services for domestic supplies.

Review

2.52 Regulation 60 is a standard review clause setting out how the exit regulations will be reviewed by Government. It is required by section 28 of the Small Business, Enterprise and Employment Act 2015. The purpose of this is to ensure that regulations remain fit for purpose and do not impose any unnecessary burdens on businesses.

Question 14: Do you agree with the consequential amendments listed? And do you think any further changes are required to WIA91?

Question 15: Is there anything else you would like to comment on around Part 7 (Consequential Amendments and Review)?

3. Issues not currently covered by the regulations

Mergers between an un-exited undertaker and an exited undertaker

3.1 This is an issue which is not covered in the current draft of the regulations, but one we want to hear your views on.

3.2 At present there is a special merger regime for mergers between water companies. If an undertaker wants to merge with another undertaker, and the turnover of either company is £10 million or more, the Competition and Market Authority (CMA) considers whether the merger will have a negative effect on Ofwat's capacity to regulate the industry. If the CMA provides approval, the merger can go ahead.

3.3 The law will need to provide clarity about what happens if an exited undertaker wants to merge with an un-exited undertaker. This would present a range of policy challenges:

- If the new organisation was to be considered as an integrated organisation which had not exited the market, this would be in contradiction with our core principle that exit is irreversible.
- If the new organisation was to be considered as an exited entity, then this would be in contradiction with our principle that exit must be voluntary.
- Furthermore, exit can only occur with approval from the Secretary of State. A merger with another exited organisation could not circumvent this approval process.

3.4 Undertakers' licences of appointment are geographically bound, rather than service specific so it is not possible to issue a single licence of appointment for two companies that offer different services in different areas. This will also be the case for inset appointees that exit and subsequently want to add new sites to their appointments.

3.5 The Government's objective is not to place any undue limits on mergers and acquisitions going ahead. However, for the reasons set out above, our current view is that the regulations will need to secure that the appointments of an exited and a non-exited undertaker cannot be merged. We would welcome your views on this issue.

3.6 In contrast, the existing Water Supply Licences and new Water and Wastewater Supply Licences are service specific, and focus on retail services, so it would be possible for two undertakers to 'exit' from these services to an arms-length WSSL or for two WSSLs to merge. In the latter instance, that merger would not be subject to the Special Merger

Regime of the water sector but instead would be regulated by the general merger regime enforced by the CMA.

Question 16: Do you agree with the Government's proposed policy approach to mergers between an exited undertaker and an un-exited undertaker? Please explain the reasons for your answer.

4. Issues covered elsewhere in the Market Architecture

4.1 In our December 2014 policy consultation we noted that in enabling retail exits the Government has a number of tools available to us. Some measures will need to be set out in the regulations and these are covered in detail through the current consultation. Other measures will be best delivered through the Market Codes that govern the relationship between undertakers and licensees. The licence is a further important tool for securing standards within the competitive market. Further important tools include price protection, the extension of Guaranteed Service Standards to retailers and Ofwat's proposed Code on Miss-selling.

4.2 The Government has worked closely with Ofwat and the Open Water programme to ensure that these areas of work are able to support our policy on the implementation of retail exits. A summary of progress in these areas is set out below.

The Market Codes

4.3 On 11 May 2015, Open Water published the most recent iteration of the documents that will govern the competitive retail market for non-household water and sewerage customers. These technical documents have been informed by extensive industry consultation².

4.4 The latest iterations of the technical documents include the processes that market participants must follow in exit areas where these differ with those drafted for non-exit areas (e.g. the gap site process for unregistered non-household premises). The draft codes and supporting documents were adopted by MOSL and re-published on 14th July for the purposes of informing the pre-Vendor stage of the ongoing tendering exercise to procure the IT systems needed to manage transactions in the retail market. Ofwat will consult on the full suite of market documents towards the end of this year.

The Licence

4.5 In June 2015 Ofwat consulted on the details of their proposals for the changes to licences and appointments that are required to support market opening. Combined with the details of the industry codes this gives a substantively complete picture of how the new retail market framework will look. The proposals for the new WSSL include proposals designed to ensure that acquiring licensees will have all of the resources needed to meet their licence and statutory obligations³.

² <http://www.open-water.org.uk/news/map3-technical-appendices-published/>

³ http://www.ofwat.gov.uk/competition/review/pap_con201506retaillicence.pdf?download=Download

Default Tariffs

4.6 In the final determinations, published in December 2014⁴, Ofwat agreed a set of 'default tariffs' with incumbent water companies. These set the maximum price and service levels that these companies must offer to their non-household customers as long as those price controls are in place. In the same price limits Ofwat proposed to give companies the opportunity to re-open those price limits for April 2017 ahead of market opening. Ofwat intends to consult on those re-opening arrangements later in the year.

4.7 Where an undertaker chooses to exit from its non-household retail operations, Ofwat indicated in its response to the consultation that it believes that customers should be transferred on the same price terms as they were on prior to the transfer, on the principle that customers should be 'no worse off'. This is in line with our principle of 'equivalence'. The detail of this will need to be taken forward by Ofwat, either as part of its work on deemed contracts (see below) or via a licence change.

4.8 Ofwat is currently working with companies and other stakeholders to develop these arrangements and will consult on deemed contracts and their relationship with default tariffs, including any associated draft code provisions or licence conditions during the Autumn of 2015.

Guaranteed Service Standards

4.9 WA14 includes powers for Ministers to apply Guaranteed Service Standards (GSS) to licensees as well as appointees, based on recommendations from Ofwat. Ofwat has begun a review of the existing GSS arrangements, with a view to consulting on proposals during summer 2015, and is expected to make recommendations to Defra by the end of October 2015. Ofwat's review will focus in particular on the possible application of GSS to all retailers in order to provide protection for non-household customers. Ofwat and the Open Water programme have already undertaken preparatory work to ensure that the market codes contain provisions to support the practical application of GSS arrangements.

Code on Miss-selling

4.10 The Government is committed to working with Ofwat on the production of a code on mis-selling. Ofwat plans to publish a package setting out their proposed approach to customer protections, including in relation to mis-selling, in September 2015.

⁴ <https://www.ofwat.gov.uk/pricereview/pr14/finaldet/>

Deemed contracts

4.11 The Government's expectation is that all licensees wishing to operate in exit areas will publish deemed contract schemes on their websites. Ofwat will regulate the content of these schemes in order to ensure that they provide effective protection for transferred customers and licensees. Recognising that clarity is needed about the content of the deemed contracts ahead of market opening, Ofwat is taking forward the necessary work with undertakers and licensees and other stakeholders and will consult on deemed contracts, including any associated draft code provisions or licence conditions during the Autumn 2015.

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

4.12 The current Water Supply Licence includes what is sometimes referred to as the 'in-area trading ban'. This prevents the holder of an existing WSL from carrying on activities in the area of a related undertaker and so ensures that the undertaker cannot discriminate in favour of its related retailer. Our December policy consultation highlighted the changes made in the Enterprise and Regulatory Reform Act 2013, which repealed the legislation that had required this condition and noted that Ofwat were committed to removing it from the licence. In Ofwat's recent licencing consultation, they set out the process by which they propose to remove this condition from the licence to enable all retailers to compete effectively for customers with multiple premises across different areas.

5. 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.

Exit 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.

Annex A - Application to the Secretary of State to withdraw from the non-household retail market

A. Applicant details

1. Name of undertaker:

Please provide the legal name of your organisation, as it is registered with the regulator Ofwat.

2. Address of undertaker:

3. Details of area of appointment:

4. Is your area of appointment either wholly or mainly in England? Yes No

Please note that this application process is only open to companies that are wholly or mainly in England.

5. Are you a Water and Sewerage Company (WaSC) or a Water only Company (WoC)?
WaSC WoC

Both WaSCs and WoCs are eligible to apply to exit the market. If you are a WaSC, the regulations require that you must exit from the market for both water and sewerage retail services to non-household customers.

6. Contact details of a company representative who can be contacted about this application.

Please include representative's name, job title, office address, email address and telephone number.

B. Reasons for exit application

7. Please outline your company's reasons for wanting to exit the non-household retail market.

The Secretary of State wishes to understand the reasons behind your application to exit, how it will support your company's business plan.

C. Information about acquiring licensee(s)

Please ensure that you include a ‘Letter of support’ from all acquiring licensees with your application. Requirements for the letter are set out in Annex 1.

8. How many acquiring licensees will be involved in this exit?

Undertakers are able to exit to one acquiring licensee or more than one.

Note: If there is more than one acquiring licensee please complete this section for one of the acquiring licensees, and the additional space in Annex 2 for any others.

9. Name of acquiring licensee:

Please provide the legal name of the acquiring licensee, as registered with the regulator Ofwat.

10. Address of acquiring licensee:

11. Evidence that the acquiring organisation holds a Water Supply and Sewerage (WSSL) licence:

Please provide evidence that the acquiring licensee holding the appropriate licence, issued by Ofwat. You may provide this by inserting a link to the licence on Ofwat’s website in the box below.

12. Declaration that the licensee holds an appropriate Certificate of Adequacy:

Please also provide evidence that the license includes a Certificate of Adequacy that reflects the resources that would be required were the proposed transfer to go ahead. This is required as part of Ofwat’s licencing process to indicate that they can take on the additional customers as part of an exit without either the existing or new customers suffering as a result of a lack of resources.

D. Information about proposed exit arrangements

Exit date

13. On what date do you propose to withdraw from the non-household retail market?

Please give an exact date. This is necessary to provide clarity about when the legal duties will transfer from the undertaker to licensee if an exit application is approved. This date must be at least 5 months from the date of your application. It must not be before April 2017. You may change the exit date to a later date by notifying the Secretary of State in writing. Any new date must fall within 2 months beginning with the exit date specified here.

Premises to be transferred

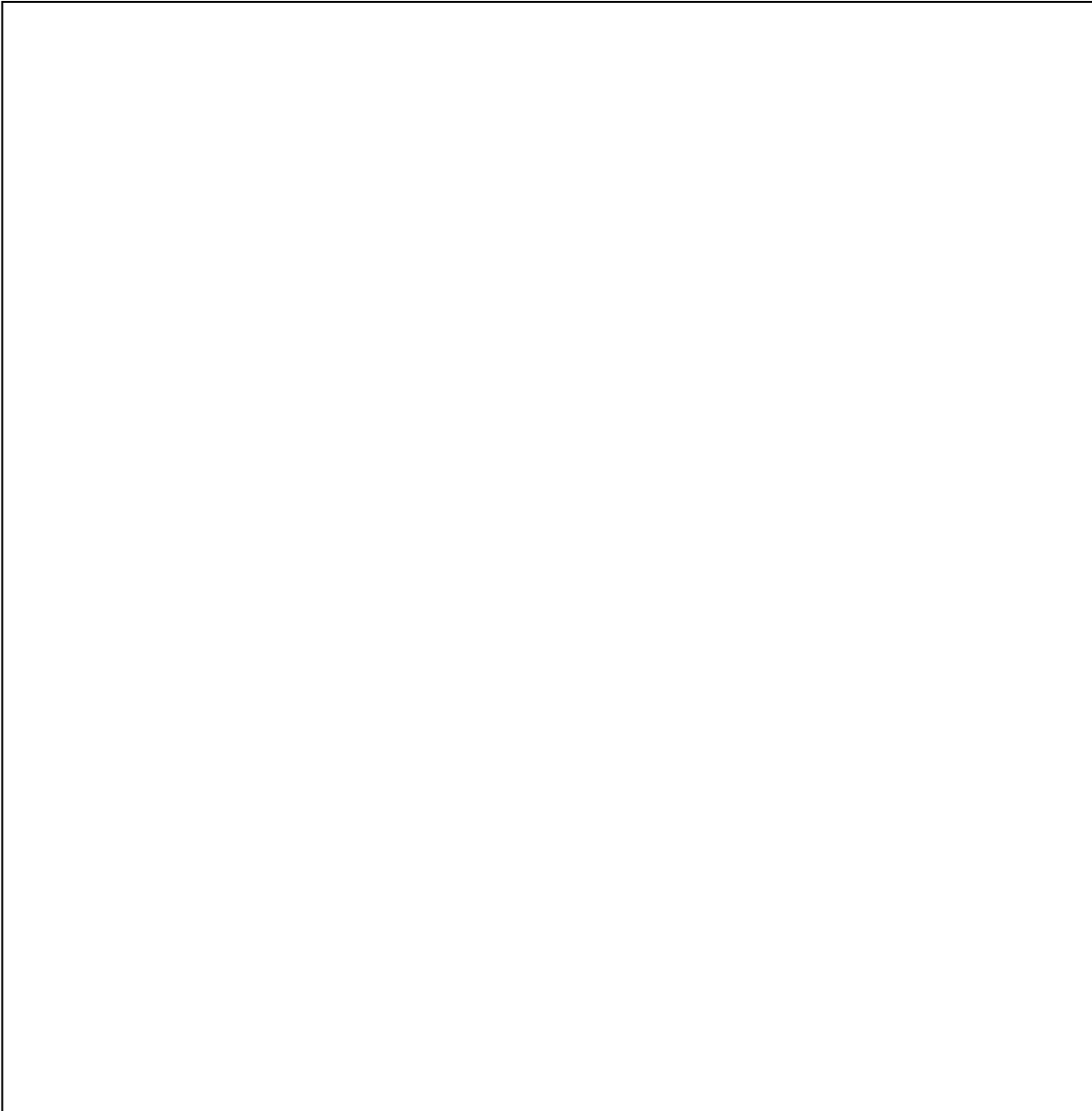
14. Please outline how the premises that are to be transferred to the acquiring licensee(s) as part of the exit will be able to be identified.

Please provide confirmation that this information is kept in full by the market operator. You are not required to send any customer information directly to us.

Transfer of customers

15. How do you intend to transfer your customer base to the acquiring licensee? Please outline below.

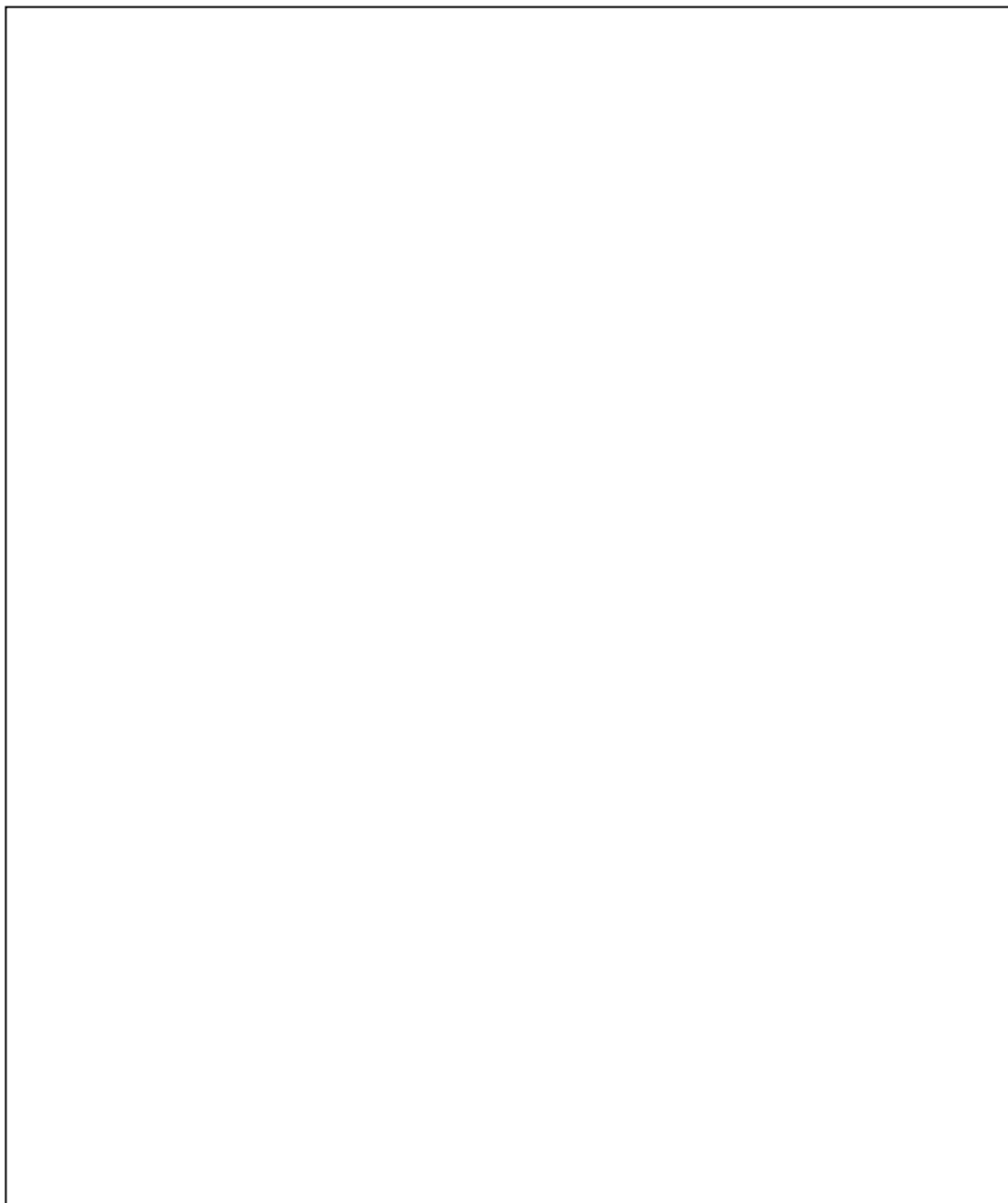
Please note that the exit regulations require that all customers with special agreements must be transferred through a statutory transfer scheme, which has been approved by Ofwat. No exit can go ahead until this approval has been provided.



E. Customer notification of an exit

The Government wants the customers of an exiting undertaker to have a positive experience of the process. This section asks how you and the acquiring licensee(s) will comply with the customer communication requirements in the regulations and make sure that customers are fully aware of the arrangements and options available to them.

16. Please outline how you intend to communicate with your customers about your proposed exit from the non-household retail market.

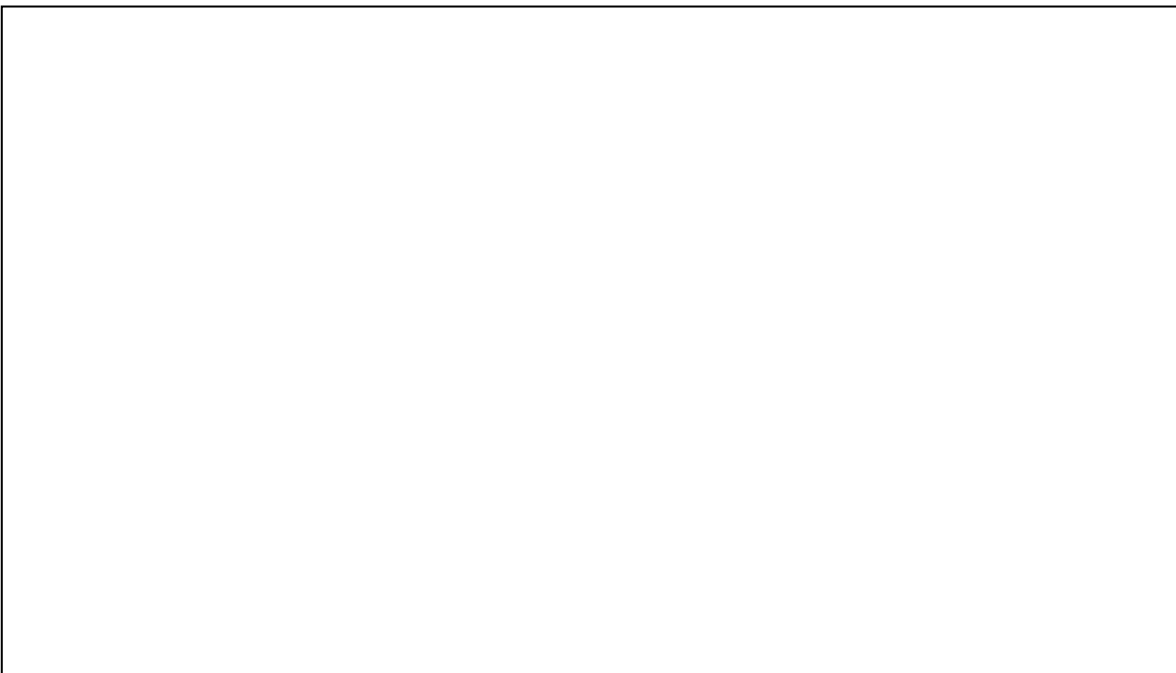


F. Ensuring a seamless process for customers

17. What measures do you have in place to ensure that customers will continue to receive a retail service that is fit for purpose until the exit date?



18. Please outline any other measures that you will make to ensure that customers have a positive experience of the exit.



G. Supplier of first resort and last resort regimes

The supplier of first resort (SoFR) pool and supplier of last resort (SoLR) panel are groups of licensees which will provide essential services in supporting the new competitive market. The SoFR pool will be directed to take on new customers by Ofwat. The SoLR regime will be directed to take on batches of customer in the case of the insolvency of another licensee.

Supplier of first resort pool

19. Please provide the name of the acquiring licensee(s) who will be participating in the supplier of first resort pool

*Please note that **at least one** acquiring licensee in each retail exit must participate in the supplier of first resort pool. The clear expectation is that all acquiring licensees will do so except where a case has been made to Ofwat that this would be disproportionate and permission not to do so has been granted.*

20. Will any of the participating acquiring licensees not be participating in the supplier of first resort pool? Yes No

21. If so, please provide evidence of permission not to do so from Ofwat.

Supplier of last resort regime

22. Please provide the name of the acquiring licensee(s) who will be participating in the supplier of last resort regime

*Please note that **at least one** acquiring licensee in each retail exit must participate in the supplier of last resort regime. The clear expectation is that all acquiring licensees will do so except where a case has been made to Ofwat that this would be disproportionate and permission not to do so has been granted.*

23. Will any of the participating acquiring licensees not be participating in the supplier of last resort regime? Yes No

24. If so, please provide evidence of permission not to do so from Ofwat.

H. Declaration

I, in my capacity as an authorised representative of
..... (The
undertaker), declare that the information in the application form above is true to
the best of my knowledge and belief. I confirm that my company will fulfil all the
statutory obligations relating to retail services for non-household customers
until (the date of the exit).

Signature

Date

Annex 1⁵ – Letter of support from acquiring licensee(s)

Please attach to your application a letter of support from each acquiring licensee. This should cover the following:

- Agreement that the exit arrangements as outlined in the application are correct.
- Confirmation that the acquiring licensee will fulfil the statutory obligations relating to providing a retail service to all customers acquired through the exit.
- Information about how the acquiring licensee will communicate with the customers they will be acquiring.
- Details of the measures which the acquiring licensee will have in place to ensure that all customers receive a fit for purpose retail service from the exit date onwards.
- Information about any other measures which the acquiring licensee will make to ensure that customers have a positive experience of the exit.

⁵ This is Annex 1 of Annex A of the Consultation document.

Annex 2⁶ – Additional acquiring licensee (s)

Please complete these sections if more than one acquiring licensee will be involved in the exit. You can copy and paste these boxes as many times as needed if there will be more than three acquiring licensees.

Acquiring licensee two

Name of acquiring licensee:

Please provide the legal name of the acquiring licensee, as registered with the regulator Ofwat.

Address of acquiring licensee:

Evidence of appropriate retail licence:

Please provide evidence of the acquiring licensee holding the appropriate retail license from Ofwat. You can either provide this through inserting a link to the licence on Ofwat's website or through attaching documentation along with your application.

Evidence of new Certificate of Adequacy:

Please also provide evidence that the license includes a Certificate of Adequacy that reflects the resources that would be required were the proposed transfer to go ahead. This is required as part of Ofwat's licencing process to indicate that the licensee can take on the additional customers as part of an exit without either the existing or new customers suffering as a result of a lack of resources.

⁶ This is Annex 2 of Annex A of the Consultation document.

Acquiring licensee three

Name of acquiring licensee:

Please provide the legal name of the acquiring licensee, as registered with the regulator Ofwat.

Address of acquiring licensee:

Evidence of appropriate retail licence:

Please provide evidence of the acquiring licensee holding the appropriate retail licence from Ofwat. You can either provide this through inserting a link to the licence on Ofwat's website or through attaching documentation along with your application.

Evidence of new Certificate of Adequacy:

Please also provide evidence that the license includes a Certificate of Adequacy that reflects the resources that would be required were the proposed transfer to go ahead. This is required as part of Ofwat's licencing process to indicate that the licensee can take on the additional customers as part of an exit without either the existing or new customers suffering as a result of a lack of resources.

Annex B – Retail Exit Assumptions

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.