Draft Regulations:

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

- a Defra consultation
1. **Introduction**

1.1 The Consumer Council for Water (CCWater) is the statutory consumer organisation representing the interests of customers of regulated water and sewerage companies in England and Wales. CCWater has four regional committees in England and a committee for Wales.

1.2 We welcome the opportunity to respond to Defra’s consultation on ‘The Water and Sewerage Undertakers (Exit from Non-household Retail Market) Regulations’, which sets out how water companies will exit the non-household retail market from 2017.

2. **Executive Summary**

2.1 We broadly support Defra’s proposals put forward in its consultation document and draft regulations. These regulations put protections in place for non-household customers of water companies that choose to exit the retail market from April 2017.

2.2 We think it is right that the draft regulations will require that:

- There is a formal exit application process that companies must adhere to;
- exiting companies communicate their plans with customers and CCWater ahead of time;
- acquiring companies provide assurances of their capabilities;
- the Secretary of State approves or rejects any individual exit;
- companies provide a “standard level of service” through a deemed contract;
- Ofwat maintains a list of alternate eligible suppliers; and
- a supplier of first resort must take on new customers who do not seek out and negotiate their own preferred retailer;

Nevertheless, we consider the regulations could offer stronger customer protection in some areas:

2.3 **Communication method**: The draft regulations require water companies to give customers web-based notice of their intention to exit. Non household customers, particularly small businesses and sole traders (i.e. those least likely to seek to negotiate new contracts) could miss this information and be at a disadvantage compared to larger customers who might be more aware of the competitive market. Our view is that a written letter should also be sent to the billing address.

2.4 **Communication timescale**: The draft regulations require that customers get two months notice from their water company if it intends to exit. Our research\(^1\) found customers expected they would get at least six to 12 months notice with a reminder between one and three months ahead of exit. Therefore, we would welcome a longer notice period that is closer to customer expectations.

\(^1\) CCWater’s Exit Strategies research, November 2014 - [here](#)
2.5 **Customer information and complaint transfer:** The regulations require acquiring companies to take on the exiting company’s outstanding complaints. Our research showed customers expected the exiting company to sort out complaints. We would welcome clarity on how customer data, including complaints history, is expected to be transferred between the exiting and the acquiring companies so that outstanding complaints are resolved quickly by the acquiring company.

3. **Consultation Questions**

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<th>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?</th>
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Yes. From dealing with complainants in the water industry, we know that customers usually expect that the company that serves them via physical water or sewerage pipes ought to be their undertaker.

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<th>Question 2: Do you have any other comments on Part 1 (Citation, interpretation and commencement etc.) of the regulations?</th>
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Along water company borders, it may be difficult to determine which customers belong to which company due to inaccurate or incomplete asset location records. This could lead to some customers being exited by their company when they should not be. Customers may raise objections or appeals when they believe that should not be included in an exited area.

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<th>Question 3: Do you have any comments on our approach to exit applications as set out in the regulations?</th>
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The consultation document at paragraph 2.29 states that regulation 7 requires that an exit application sets out the premises that are to be transferred with a view to providing a record of customers that have and have not been switched in case of objections or appeals.

Regulation 19(2)(c) refers to the Authority making the determination about a transferred premises on the application of the occupier. However, it is not clear how customers would actually object (before an exit) or appeal (after an exit). Therefore, we would welcome clarity from Ofwat on how disputes from customers about contested properties will actually be handled and settled.

We also note that there is no requirement on the exiting or acquiring company to maintain specific records to refer to later in case of an exit dispute.

In regulation 11.2.a, it is unclear what would constitute an exit application that was “contrary to the interests of the public”? Defra should clarify how and when it expects to exercise powers to reject exit applications. This might prevent a company from submitting an exit application that is likely to be rejected. As written, some customers or their representative groups may consider this
part of the exit application to be a mechanism by which they could lodge an objection against the exit.

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

No, we think that customer communication could be more robust in terms of the communication method and timeframe. However, we welcome the content that Defra expects to include in the exit notice.

1) **Communication method:** It is unclear why regulation 9.1 requires a notice to be put on the website but not by letter or email. Most non household customers, but particularly micro businesses and sole traders, are unlikely to trawl a company’s website looking for information about market exit. Customers who fail to see such notification on a company website may have cause to complain when they are switched, which could reduce customer satisfaction and trust in the market.

Customers should be contacted by letter at the postal address to which their water bill is sent. We expect that a water company that wishes to exit the market should be expected to bear the costs of such a notification process.

2) **Communication timeframe:** We agree that there should be a requirement for a minimum period to notify customers of an exit application.

We can appreciate the range of opinion that Defra indicated it received about appropriate timeframes. However, our research\(^2\) that found that business customers expected they would get at least six to 12 months notice and a reminder between one and three months before exit. A two month notice period will fall short of customers’ expectations and could erode confidence in industry regulation. Therefore, we would welcome a longer notice period that is closer to customer expectations.

3) **Communication content:** We note regulations 11.3 and 12. We agree with the content that regulation 12 will require in the exit notice, (e.g. what is happening in general terms, the applicable terms and conditions, name and contact details of the acquiring supplier and the ability to switch). We agree that the exiting company should specifically explain what will happen to any outstanding complaints.

We think that exit information could be presented to customers in a standard format (e.g. perhaps like the financial sector’s KEY FACTS document) to increase awareness of crucial information like:

- The price customers will pay before and after the exit/transfer;
- how billing arrangements will operate during and immediately after the transfer; and
- the right to switch to an alternate retail supplier if desired.

\(^2\) CCWater’s Exit Strategies research, November 2014, pages 61-62 - [here](#)
Customers that eventually occupy properties that were empty or built during a company’s exit process will need to know where to easily find information about potential retail suppliers. See our response to Question 12.

We support regulation 9(2)(b) which requires the exiting company to give notice to CCWater. Section 43.2.a.iv of the Water Act 2014 already states that the company may have to consult with CCWater if it intends to exit. These regulations will give CCWater the opportunity to offer advice as appropriate to the exiting and acquiring water companies (e.g. about their communications plans). We would also be able to prepare information ahead of time for customers who might contact us asking about the retail exit of their water company.

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

The application is relatively straightforward overall.

As reflected in regulation 5, Annex A, question B7 states: “Please outline your company’s reasons for wanting to exit the non-household retail market.”

We foresee that for reasons of business sensitivity, undertakers may only outline a cursory reason about why they are exiting. Therefore, it may help companies that apply to exit to understand how much detail and to what end Defra intends to use this information.

We would welcome clarity about whether a company’s outlined reasons for exit might be used to determine if an exit is or is not in the public interest (see Question 3).

**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?**

We agree that the use of a statutory transfer scheme will help deal with special circumstances. For instance, it is sensible to use it for a complicated situation such as transferring customers with special charging agreements as it offers a layer of customer protection.

We recognise that Defra’s proposal to use a more flexible combined approach will avoid creating undue restrictions on companies. However, Defra should consider whether companies ought to explain, perhaps in their exit application, when they have chosen not to use a statutory transfer scheme and how relevant customers will be protected.

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

With regard to the transfer of outstanding complaints, regulation 17(3) states that “Anything done by or in relation to the relevant undertaker in connection with the complaint is to be treated, on and after the exit date, as having been done by or in relation to the acquiring licensee.”
Our Exit Strategies research\(^1\) showed that business customers expected that any outstanding issues would be 'locked in' to the current supplier or have a 12 month transition period whereby the exiting company had to resolve outstanding complaints. Therefore, if complaints are transferred in an unresolved state, customers may be reluctant to accept delays due to the acquiring retailer having to become familiar with the complaint history.

The ability to transfer complaint history will be a crucial data requirement for any customer that chooses to switch after market opening. But the process will be even more complex in the case of a retail exit where many customers are switched at once.

Complaint history is not going to be part of the market operator’s data system. Therefore, in response to the draft exit regulations, we would welcome clarity from water companies on the practical arrangements they are making to develop systems to transfer customers’ complaint history quickly and safely. If a system is not arranged in time for market opening, some exiting water companies may have to resort to a time consuming process of printing hard copies of complaints, scanning and then emailing them to the acquiring company.

We would expect that customers will be given assurance that any transfer of their information to another provider will be done in line with the Data Protection Act.

**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?**

We partially agree. We know from the energy sector that many customers, especially small businesses will not participate and negotiate a contract. Therefore, defined schemes and codes would be an effective way to help protect such customers. It is important that acquiring licensees offer defined tariffs, service levels and terms and conditions, and that Ofwat reviews this package.

However, neither the regulations nor consultation document make it clear under what conditions a deemed contract or equivalence (i.e. price and service maintained at the level the incumbent provided) might apply.

Furthermore, if a one size fits all approach is adopted, a single set of terms and conditions could favour some groups of customers and not others. We would welcome clarity on how this disparity would be avoided.

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

Regulation 25 places a duty on the acquiring licensee to contact the customers it has received as a result of a transfer to make them aware that they have been transferred and of the terms and conditions that now apply.

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\(^1\) CCWater’s Exit Strategies research, November 2014 - [here](#)
There should be a further requirement to remind customers that they are under no obligation to remain with the retailer they have been exited to and that they can negotiate a contract with this or another retailer.

If information is only internet-based, we are concerned it may not be accessible by all customers.

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

We recognise that Defra’s proposals are meant to encourage exited customers to participate in the market by safeguarding their right to access a deemed contract. Therefore, we agree that giving this added reassurance will encourage some customers to switch away from the acquiring company.

We support the idea of a pool of suppliers of first resort (SOFR). However, we believe some customers will consider that a pool of licensees to which they need to apply via Ofwat will be less straightforward than simply reverting to their acquiring company’s deemed contract. Therefore, the SOFR application process will need to be quick and easy for customers.

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

The exit application could be web-based. The process could potentially use some of the IT systems that MOSL is currently developing.

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

We welcome the commitment to require all acquiring licensees (besides self-supply licensees) to join the supplier of first resort and supplier of last resort pool, prior to subsequent review by Ofwat.

Regulation 41 is unclear in how the authority would publicise its list. We would expect that customers should have access to a switching information facility, likely online, to quickly and easily identify eligible service providers. In Scotland, we understand that WICS created its “Scotland on Tap” website for this purpose soon after market opening due to customer interest.

**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)?**

We would welcome clarity about whether an acquiring licensee automatically becomes the supplier of first resort in a given area if it has bought the entire customer book of the exiting company.
Question 14: Do you agree with the consequential amendments listed? And do you think any further changes are required to WIA91?

We agree that amendments are needed to the Water Industry Act 1991, specifically for services that have traditionally been linked to wholesalers’ activities.

However, as written, Schedule 2 appears to absolve any water company from complying with a connection request. We assume that water supply and sewerage connections can still be requested, albeit through the acquiring licensee. The regulations need to clarify this point.

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

No.

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.

It could be difficult for conditions of appointment to be varied to accommodate a merger of companies in different areas offering different services. Therefore, we understand why Defra is considering policies to deal with this.

We look forward to seeing whether water company responses to this consultation reach a consensus about how to deal with future mergers.

4. Enquiries

4.1 If you have any questions about CCWater’s response to this consultation, please contact:

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