Interim supply arrangements in relation to the opening of the non-household retail market
- an Ofwat 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 Ofwat’s consultation on interim supply arrangements in relation to the opening of the non-household retail market.

1.3 We have responded to this consultation alongside Ofwat’s consultation on Deemed Contracts.

2. **Executive Summary**

2.1 We broadly support the proposals Ofwat put forward in its consultation. We are supportive of the Policy Aims for the interim supply arrangements detailed on page 17 of the consultation document. In particular we agree that the first such aim must be to “Protect Customers” by offering “the best possible Interim Supply price and service offering for directly-affected customers”

2.2 We agree with the consultation in these areas:

- WSSL licensees should be required to opt-in to the supplier of last resort (SOLR) pool once they reach a pre-determined market share threshold.
- Ofwat should be notified of any intention to cancel a Wholesale Contract in order to prevent unnecessary Interim Supply Events.
- There should be the facility for a market-based allocation process, where it is clear that this would benefit customers.

2.3 We disagree with the consultation in these areas:

- Customers should not be prevented from switching supply to an alternative retailer of their choice during the Interim Supply Allocation Process.
- There should be some restrictions on the opt-out process to prevent cherry picking and to maintain a strong SOLR pool.
- Deemed Contracts should not be restricted to a duration of only three months; particularly if this means a customers being transferred onto worse contract terms.
3. Consultation Questions

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<th>Q1 Do you consider that it should be entirely voluntary for WSSL licensees (other than acquiring licensees) to elect to be an eligible licensee for the purposes of the interim supply arrangements? What do you consider to be the advantages and disadvantages of such an approach?</th>
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<td>Q2 Do you agree that any voluntary opt-in should be permitted on an area-by-area basis?</td>
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No, the opt-in to interim supply arrangements should not be entirely voluntary. Although it can be argued that a voluntary procedure allows WSSL licensees greater control over their exposure to the market we have concerns that this may lead to the acquiring licensee being the only one on the supplier of last resort (SOLR) list in exited areas. A lone SOLR could be a disadvantage if the circumstances of the WSSL licensee in question were to change, such as the acquiring licensee not having sufficient capacity to accept new customers, or if it runs into financial difficulties and it is subject to a disorderly exit.

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<th>Q3 Do you consider that there should be a de-minimis threshold above which WSSL licensees will be obliged to elect to be an eligible licensee for the purposes of the interim supply arrangements?</th>
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<td>Q4 Do you consider that any such de-minimis opt-in threshold should apply on an area-by-area basis?</td>
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<td>Q5 Do you have a view on the level of market share in an area above which a licensee should be obliged to opt-in as an eligible licensee in that area?</td>
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Setting a threshold over which a WSSL licensee is required to be an interim supplier is the best option in order to ensure (or at least give the best chance of ensuring) that there is a strong pool of companies to which Ofwat can direct customers.

If the threshold is set at the right level - and we agree that this will need to be kept under review as the market changes - it will protect smaller, new entrant WSSLs from having to build in unnecessary extra capacity, and thereby increase its risk profile, in order to compete in the market.

Applying this threshold on an area-by-area basis may be problematic since a Retailer who operates nationally may be willing to accept customers from a region where they do not have a portfolio large enough to trigger the threshold at the time of the interim supply event. They would be excluded from doing this under a system with a strict regional threshold.

In view of the above it would be preferable for Ofwat to adopt a mixture of the two approaches:

- Retailers mandated to be eligible licensees if they hold a regional market share above the determined trigger point;
Retailers able to opt-in if their Certificate of Adequacy demonstrates they have sufficient capacity to accept additional customers despite insufficient current market share in a particular region.

Q6 Do you have any comments on the process by which a licensee should elect to be an eligible licensee for interim supply?

The licensee should be obliged to opt-in to the Interim Supplier Allocation Process only once it passes the trigger threshold. At this time, or any other time prior to a Trigger Event (in order to be eligible, as stated in the consultation), it could also give notice that it wished to opt-in for any other regions in which it had not met the mandatory threshold.

Q7 Do you agree that the interim supply arrangements should be invoked by Ofwat either giving notice of its intent to revoke a licence in the case of insolvency or of licence revocation in the case of a serious breach of a licence enforcement order?

Q8 Do you agree that Ofwat should be able to revoke a licence with less than 30 days’ (but not less than 24 hours’) notice, if so, in what circumstances?

Q9 Do you agree that a licensee should be prohibited from contracting with any new customers or registering any additional premises from the date of Ofwat’s notice of intent to revoke the licence?

We agree with the proposals made by Ofwat in this part of the consultation. Although it is acknowledged that the methods for invoking the interim supply arrangements are broader than those used in the GB energy market. However, we are content with Ofwat’s reasoning for this - that it can act sooner in order to protect customers and prevent a situation from worsening.

It is stated throughout the consultation that interim supply arrangements are a method of last resort, and so we are not concerned that they will be invoked prematurely. With this in mind, once a decision has been taken to enact the interim supply arrangements, it would be preferable for this to occur as soon as practical.

We would expect that discussions would have taken place between Ofwat, the Market Operator and the failing licensee prior to any action being taken and for there to be no doubt as to the seriousness of the situation. CCWater should also be kept informed of these discussions, so that we can offer advice to any customer that contacts us with concerns. If these discussions have taken place, it should minimise the likelihood of any appeal against Ofwat’s decision.

Once a licensee has been identified as failing, it would be desirable for the interim supply arrangements to be enacted as soon as possible. This will both reduce the uncertainty for customers and lessen the potential bad debt exposure for the wholesaler(s).

We agree that the failing licensee must be prohibited from contracting with new customers once the notice of intent to revoke its licence has been served. Clearly it makes no sense for a customer to switch to a licensee only to find themselves being allocated elsewhere a few days or weeks later.
Q10 Do you agree that the interim supply arrangements should be invoked upon a Wholesale Contract being terminated?

Q11 Do you agree the current Wholesale Contract termination provisions in the draft WRC should be amended such that the prior approval of Ofwat is required before a Wholesale Contract is terminated?

We agree that Option 2 - requiring a Wholesaler to gain the prior approval of Ofwat before a Wholesale Contract can be terminated - offers the best solution to the foreseen problems caused by the relationship between the Wholesale Contract termination process and its potential impact. Ofwat being required to give its approval will, in effect, allow the regulator to effectively act as a mediator in any Retailer/Wholesaler dispute.

This could prevent a regional disagreement resulting in potentially unwelcome national consequences and may facilitate an alternative enforcement solution that would be better for customers.

It will be important for Ofwat to make its decision on any required action in a timely manner to avoid any delays which would result in uncertainty for customers, and the companies involved.

Q12 Should Ofwat provide aggregate information on affected customer numbers by region and class to eligible licensees?

Yes, this should be the minimum information provided to allow companies to determine if they have capacity to accept additional customers following an interim supply event.

Q13 Would additional disaggregation of customer numbers, such as by customer class and type of existing supply arrangement, be useful? Do you have any views on the most appropriate and practicable basis for any such disaggregation?

Q14 Should Ofwat also provide some average bill information based on published charge schemes to support any market-based allocation?

Licensees are likely to welcome greater disaggregation of information in order to better understand the types of customers they may be taking on. We support any measures that would result in customers needs being identified and catered for more appropriately. It is inevitable that licensees will see some customer types as a more attractive proposition than others, which is why Ofwat’s separate work on Deemed Contract arrangements is important in ensuring a minimum level of backstop protection for all customers.

Q15 Do you consider that it would be beneficial and proportionate temporarily to prevent any new customer transfer requests pending the completion of an allocation exercise?

This would seem an unnecessary barrier to place in the way of a customer who has chosen to engage with the market. A customer should be able to make the decision to change their supplier at any time, irrespective of the status of their current supplier. Any licensee
bidding on the basis of customer information will simply need to factor in their submissions that a customer that could potentially be allocated to them will have already switched elsewhere. Since this would also be possible following a transfer, it should mean little change for the licensee. However, it has the potential to cause fairly significant inconvenience and some loss of benefit to customers if they are denied (albeit temporarily) the right to choose their supplier.

| Q16 | Do you agree that opt-outs by region and service category should be permitted? |
| Q17 | Do you consider that opt-outs by some definition of customer class should be permitted? Do you have suggestions for a simple robust basis for defining these classes? |
| Q18 | Do you consider that an eligible licensee should be able to opt-out temporarily without any restriction on a case by case basis? |
| Q19 | Do you agree that an opted-in eligible licensee should only be entitled to opt-out to the extent that the potential outcome of an allocation would exceed the capacity in its CoA, and in such an event should only be permitted to opt-out to the extent required to be within the level of that capacity? |

In line with our response to questions 3, 4 & 5 we feel that there should be restrictions to the opt-out process in order to ensure that there is a robust pool of companies from which Ofwat can allocate in customers’ best interests.

Although we would support an opt-out by region and service type, we have concerns that allowing an unrestricted opt-out based on customer class may lead to cherry picking and a lack of choice for some classes of customer.

Equally, however, we would not want to see restrictions in place that could prevent a niche retailer from participating in the interim supply allocation process, if they wished to be considered.

We, therefore, consider that it would be most appropriate to restrict any opt-out to situations where allocation would exceed the capacity signalled in the Certificate of Adequacy. This would mean licensees, including those operating in niche markets could still participate in the Interim Supply Allocation process.

| Q20 | Do you have any views on the appropriate restrictions on an acquiring licensee being able to opt-out in an exit area in respect of which it is the acquiring licensee? |

We believe that a partial opt-out by an acquiring licensee should be permitted provided that the capacity of all interim suppliers is sufficient. Ofwat’s example regarding an acquiring licensee that had since lost market share would fit with our suggestion of a mandated opt-in above a certain level, supplemented with a voluntary regional opt-in where a company can demonstrate capacity, if not existing market share.
Under this process the licensees that had gained the market share lost by the acquiring licensees would be mandated to opt-in. This assumes that at least one licensee will have reached the trigger point threshold. This may be an issue if the market becomes saturated with niche retailers. This is unlikely, particularly at market opening, but will need to be kept under review by Ofwat.

**Q21 Do you agree that we should assess the need for any market-based allocation process on a case-by-case basis using objective criteria on competitive supply prospects and customer engagement? Are there other criteria which would be relevant for such case-by-case decisions?**

Yes, the use of a market-based allocation process should be an option only where it is clear that there are potential benefits for customers over and above the use of the administrative process built into the Market Codes.

**Q22 Should undertakers be permitted to participate in a market-based allocation process for interim supply?**

We would expect Ofwat to choose the best option for customers in any market based allocation process. Provided the level playing field requirements are met we do not see how it would benefit customers to exclude the undertaker from any market based allocation, particularly if they are in the position to offer the best terms for the affected customers.

**Q23 Should we restrict any market-based allocation decisions to consideration of simple price-based offers, at least initially, while regionally-based allocation decisions are needed?**

**Q24 If you consider more complex offers involving variant non-price terms and conditions should also be permitted, please suggest how they could be objectively compared.**

We agree that it would be in customers’ best interests for any market-based allocation process to be determined solely on simple price-based offers until the market matures. Requiring all eligible licensees to match the non-price terms of the undertaker/acquiring licensee should establish a base level of consumer protection and allow Ofwat to make a decision in the best interests of the affected customers.

**Q25 What are the pros and cons of including a market-based allocation process from April 2017 and do you support this?**

As we mention in our answer to previous questions we can see the benefits of a market based allocation process because of the potential for it to deliver a better price package for customers.

Whilst we understand that this may not be considered a priority because there will be consumer protection measures in place through the interim supply process, we believe that the benefits to customers are such that this should be in place for April 2017.
Q26 Do you agree that the deemed contracts used for interim supply should be backdated to the time of the relevant interim supply trigger event?

Yes. We agree that the composition of the water retail market at market opening, and presumably in its early months, will be primarily regional in nature. This may cause some issues in determining the contribution other retailers and customers should be expected to make to cover any period between the notice to revoke a licence and the allocation to a new retailer.

Backdating the deemed contract to the time of the interim supply trigger event is the most practical option. However, this makes it important that the affected customer is not restricted in their ability to switch to an alternative retailer during the allocation process and is made aware of any alternative tariffs that the interim supplier offers if the deemed contract is not the most cost effective option.

Q27 Do you agree that Ofwat should confirm any proposed adjustments to published terms and conditions for use in administrative allocation at the same time as it gives notice of the relevant interim supply trigger event?

Yes. This seems a sensible extra layer of consumer protection to build into the process.

Q28 Do you agree there is a potential need for specific charging rules governing undertakers’ interim supply charging schemes, to support the ISC? Do you have suggestions for such rules?

We agree that the use of specific charging rules to ensure customers are not disadvantaged should be explored further; we believe this would be best handled through a separate consultation once the interim supply allocation procedure has been determined.

Q29 Do you agree that the duration of an eligible licensee's deemed contract for interim supply should be three months? If not, please explain the rationale for a shorter/longer term.

We are not clear what the advantages of moving a customer onto a separate, non-negotiated, tariff would be. We agree that effort should be made to encourage the customer to engage with the market and to either renegotiate their terms with the allocated retailer, or switch elsewhere. However, we know from the energy market that a significant number of smaller business customers do not engage with the market despite efforts to encourage them. We do not agree that these customers should be potentially further disadvantaged and inconvenienced by moving them to less favourable terms and conditions.

There is a proposal (addressed by Question 7) in the deemed contracts consultation that a review point is built into the process after 12 months. We agree with this and see no reason why this should not equally apply in an Interim Supply situation. Our response to the deemed contract consultation is reproduced below for reference:
However, retailers should make reasonable efforts to notify customers they are on deemed contracts. We believe 12 months is a reasonable review point.

We welcome a mechanism that invites, but does not force, customers to make an active decision about whether they want to continue on a deemed contract or try to find a more favourable contract either by switching or staying with their existing retailer.

Q30 Do you agree with the information which it is proposed that an appointed interim supplier should provide to its allocated customers?

The information should state that, as well as customers being able to switch to an alternative retailer, customers may wish to discuss with the allocated retailer the availability of better terms than those which are available under the deemed contract.

The information should also briefly explain the Interim Supply process - making clear that Ofwat has directed the company to take on the customer.

Q31 Do you have any views on whether any outstanding service requests that the previous (failed) retailer had initiated with a wholesaler should continue or whether there should be some alternative treatment of any such outstanding service requests under the WRC following an interim supplier allocation?

If the failed retailer has made a service request on behalf of the customer then the wholesaler should look to honour the request. This would lessen inconvenience to the customer who would otherwise simply have to make a repeat request for the same action through their new retailer, once allocated.

If a new Retailer has been allocated once the service request has been completed then the information should be routed through them. Otherwise, the Wholesaler should communicate directly with the customer.

4. Enquiries

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

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