

Disconnections – shared supplies September 2008

This document presents revisions to the Disconnections Document relating to the disconnection of non-household customers receiving services by way of a shared supply. It builds on the Disconnections Document finalised following the Commission's 14th licensing consultation published in December 2007.

The Commission welcomes comments on these materials. Comments should be sent to the address below before 3 October 2008.

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Background

An issue has been raised by Business Stream with regard to a number of customers who currently take water and sewerage services but refuse to pay for them.

The structure of the competitive market is such that licensed providers bear the credit risk for all non-paying customers – this bad debt was incorporated in the retail margin allowed for in the 2006-2010 price determination. Where a customer refuses to pay their licensed provider, that licensed provider must continue to pay Scottish Water the wholesale charges for the services being taken, until such time as the customer is disconnected.

The Disconnections Document published by the Commission in December 2007¹ allows a licensed provider to disconnect a customer where that customer has not paid for the services it receives². The Disconnections Document requires a licensed provider to comply with certain regulatory and statutory requirements before a customer may be disconnected for non-payment. These requirements include the issue by the licensed provider of a Disconnection Warning Notice³ to the customer and a Disconnection Request to Scottish Water. The Disconnections Document also sets out the circumstances in which a customer may not be disconnected⁴.

Limitations on disconnections

One of the limitations on disconnection set out in the Disconnections Document prohibits disconnection of a customer's services where water services for any purpose to any other premises would be adversely affected.

Some customers are connected to Scottish Water's network by way of a shared supply with another customer. Although a customer may not be disconnected if that disconnection would adversely affect another customer, as it would where customers share a supply, this does not mean that a non-paying customer on a shared supply cannot be disconnected – merely that there may be a cost to do so.

To enable a licensed provider to assess whether they wish to proceed with the disconnection of a customer on a shared supply, the Disconnections Document requires Scottish Water to advise a

¹ See the Commission's 14th licensing consultation published in December 2007.

² See the Disconnections Document pages 15 and 24, disconnection for non-payment of water services and disconnection for non-payment of sewerage services.

³ The Disconnection Warning Notice must be of form and content consistent with those prescribed by order by Scottish Ministers, see Section 5 of the Water Services and Sewerage Services Licences (Scotland) Order 2006.

⁴ See the Disconnections Document page 12, Limitations on Disconnections.

licensed provider of the cost of effecting a disconnection by way of splitting a shared supply⁵. Should a licensed provider decide that they wish Scottish Water to effect the disconnection of a shared supply, it must cover the cost incurred by Scottish Water for splitting the supply.

Issues

We understand from Business Stream that it has a number of customers where despite all efforts (including, where appropriate, legal action against the customer to recover the debt), monies remain outstanding and because the customer is on a shared supply, disconnection is not immediately possible. Further, we understand that, in line with the Disconnections Document, Business Stream has requested quotations from Scottish Water to separate such shared supplies but to date, Scottish Water has not provided quotations for the separation of supplies and has responded requesting Business Stream provide a survey of each customer's internal pipe work arrangement before they will progress with the quotation. The Commission understands from Business Stream that Scottish Water are reluctant to undertake the separation work as it entails alterations to private supply pipes within a customer's premises.

Business Stream has expressed its dissatisfaction with the current arrangements due to its ongoing liability to pay wholesale charges, whilst, in its view, having no recourse to stop supplies to a non-paying customer who is on a shared supply. Business Stream has therefore asked the Commission to examine the current position regarding disconnection of shared supplies to establish whether changes should be made to the current market framework.

Scottish Water's current powers

Scottish Water may only address a customer's pipe work up to the boundary of that customer's property. Scottish Water has no right of entry to a property under the Disconnections Document to effect the splitting of a shared supply and thereby enable disconnection. However, the fact that a customer cannot be disconnected because they are on a shared supply means that that customer's property is unlikely to be individually metered – if it was Scottish Water should be able to disconnect the customer in the normal way.

Under section 24B of the Water (Scotland) Act 1980⁶ (**the 1980 Act**), Scottish Water has the power to require works to be carried out by a customer to install a water meter⁷. Under Section 24B(4)(d) of the 1980 Act, these works can include any other works appearing to Scottish Water as being necessary or expedient, e.g. the separation of a shared supply.

⁵ See, for example, Disconnections Document footnote 13, page 17.

⁶ As amended by the Water Industry (Scotland) Act 2002, Part 4, section 64.

⁷ Under section 24B(3) of the 1980 Act, Scottish Water may serve a notice on the customer requiring completion of the works notified within a period of not less than 3 months.

If a customer fails to complete the works specified in a notice, Scottish Water also has a power to complete those works itself⁸. Further, under section 38 of the 1980 Act, if a customer refuses entry to Scottish Water when attempting to complete these works (or if Scottish Water apprehends such refusal), it may apply to the sheriff for a warrant to gain entry. The sheriff may only grant a warrant where there is an exercisable right of entry and reasonable grounds for granting entry⁹.

Examples of difficulties encountered by Scottish Water

Scottish Water has acknowledged that it has powers under the 1980 Act to install a meter at a customer's premises and as part of those works, effect the separation of a shared supply. However, Scottish Water has also highlighted some of the difficulties that may be encountered when trying to separate shared supply customers.

We understand from Scottish Water that most of these difficulties revolve around the complex pipe work arrangements which may be encountered within multiple occupancy and/or older premises. In Scottish Water's view, these difficulties mean that for some cases disconnection is not a practical option. Further, such cases can be expected to be costly and have a high potential for adverse publicity and reputational damage for Scottish Water.

Scottish Water has also expressed concern over whether the sheriff would grant a warrant for entry to enable work to be carried out for the purposes of installing a meter and then disconnecting the supply¹⁰. Scottish Water has not been able to identify any historic cases brought under sections 24B and 38 of the 1980 Act.

Accordingly, in Scottish Water's view, other options to secure payment should be pursued, such as court action.

The Commission's view

As we note above, the structure of the competitive market is such that licensed providers bear the credit risk within the market for all non-paying customers. Bad debt is incorporated in the retail margin allowed for in the 2006-2010 price determination.

The Commission has no intention of changing the financial structure of the market.

⁸ Section 24B(6) of the 1980 Act.

⁹ Section 38(3)(b) of the 1980 Act.

¹⁰ In Scottish Water's view, there may also be issues under Article 1 of the First Protocol of the Human Rights Act 1998; the right of peaceful enjoyment of property. In its view, any infringement of that right by forced entry and the carrying out of separation of supply, would have to be proportionate in seeking to achieve a legitimate aim.

The inclusion in the Disconnections Document of the requirement for Scottish Water to include an estimate of the cost of separating shared supplies was to allow licensed providers to assess whether they wished to pay for a separation of the relevant supplies in order to effect a disconnection¹¹.

In our view, the wording of the Disconnections Document is clear; Scottish Water must provide an estimate to a licensed provider as part of its response to a Disconnection Request by that licensed provider. The Disconnections Document provides that should a licensed provider consider Scottish Water's costs to be excessive, it may appeal to the Commission¹². It is clear to us that should Scottish Water seek to charge licensed providers excessively, that would be a prima facie abuse of a dominant position within the market.

Further, only Scottish Water has the power to require customers to effect works or to enter a premises to achieve the same. Scottish Water must therefore carry out any works to be effected pursuant to a Disconnection Request by a licensed provider – although that licensed provider would be required to meet the cost of the works.

The Commission has no power to require Scottish Water to disconnect a customer through the use of its meter installation and forced entry powers contained within sections 24B and 38 of the 1980 Act. Scottish Water is, however, under an obligation to meter all non-household premises that can be metered by April 2009. Should Scottish Water require sections 24B and 38 of the 1980 Act to effect the installation of a meter, then those powers are available to it. Further, if a licensed provider is willing to fund the installation of a meter so that the customer can be disconnected, we can see no reason why those works should not take place if Scottish Water is able to carry them out.

Scottish Water has indicated that if it did agree to pursue an application to the sheriff under sections 24B and 38 of the 1980 Act, it would want to be fully indemnified for all costs by the licensed provider concerned. Additionally, Scottish Water has said that any Disconnection Request sent to it by a licensed provider, with a view to pursuing a compulsory access order against the customer, would need to be accompanied by confirmation from that licensed provider that all alternative measures to recover the outstanding monies, such as court action against the customer to secure payment, had been undertaken without success. It seems clear to us that the sheriff would, at the very least, require such information before granting a warrant.

Scottish Water has rightly pointed out that its powers under sections 24B and 38 of the 1980 Act are powers and not duties – neither the Commission nor a licensed provider can require Scottish Water to exercise those powers. However, given Scottish Water's obligation to install meters in all non-household premises, should Scottish Water refuse to apply for a warrant to split the supply and install a meter at the customer's premises – having been indemnified for all costs by the relevant licensed provider – we can see no reason why Scottish Water should not be required to give its reasons for that refusal in writing to the licensed provider and the Commission.

¹¹ See section 16 of the Commission's Consultation Response to its 14th licensing consultation, '*Disconnections – a consultation paper*' published December 2007.

¹² See by way of example, point 16 on page 17 of the Disconnections Document.

Consultation

The Commission intends to revise the market framework so as to clarify Scottish Water's responsibilities and the options available to licensed providers in relation to disconnecting customers on a shared supply. The amendments will cover the following areas:

1. Scottish Water will be required to treat all disconnections of shared supplies as viable. Accordingly, Scottish Water will be required to provide to a licensed provider an estimate of the cost of separating shared supplies as part of its response to a Disconnection Request by that licensed provider.
2. As Scottish Water appears not to be providing estimates as it must under the Disconnections Document, the Commission will consider issuing a Direction to Scottish Water under section 11 of the Water Services etc. (Scotland) Act 2005.
3. Following receipt of an estimate of the cost of separating the shared supplies, a licensed provider may request that Scottish Water disconnect the customer. Scottish Water will then endeavour to effect the disconnection up to and including obtaining a compulsory access order against the customer pursuant to sections 24B and 38 of the 1980 Act to install a meter and then disconnect the supply.
4. In making such an approach to Scottish Water, a licensed provider will agree to fully indemnify Scottish Water against the costs of making such an application to the sheriff (should it be necessary). Additionally, before any application to the sheriff is made, the licensed provider will provide confirmation that all alternative approaches for recovering the debt from the customer, such as court action to secure payment, have been undertaken without success.
5. Scottish Water has complete discretion as to whether it wishes to begin an action to obtain a compulsory access order. However, should Scottish Water refuse to disconnect a customer on a shared supply following an approach by a licensed provider (assuming the licensed provider has provided the necessary indemnity and confirmations as set out above), it should give its reasons for doing so in writing to the licensed provider and the Commission.

The Commission welcomes comments on its proposals. Comments should be sent to the address on the cover page before **3 October 2008**.