



Deemed Contract Scheme September 2015

Under Section 20B of the Water Services etc. (Scotland) Act 2005, the Commission is required to make a scheme setting out the terms and conditions to be incorporated into all Deemed Contracts. Deemed Contracts exist when there is an absence of an agreement between a customer and their Licensed Provider. The consultation sets out the Commission's proposed scheme.

The Commission welcomes comments on the scheme. Comments should be sent to the email address below by **30 October 2015**.

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Under Section 20B of the Water Services etc. (Scotland) Act 2005 (the 2005 Act), the Water Industry Commission for Scotland is required to make a scheme setting out the terms and conditions to be incorporated into all Deemed Contracts.

This document provides a description of the background to the Deemed Contract Scheme, the circumstances in which a Deemed Contract will exist, the parties to the Deemed Contract, how long the Deemed Contract will be in force, when the Scheme will have effect and a summary of the key terms of the Scheme.

The draft Deemed Contract Scheme is attached as Appendix A. The Commission invites comments on the draft Scheme. Any comments should be sent to David Walters by 30 October 2015 at either competitionteam@watercommission.co.uk or to the address below.

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Background

Deemed contracts are common in other industries, most notably in gas and electricity. In general, deemed contracts exist when there is an absence of an agreement between a customer and their supplier. In the case of the Scottish non-domestic retail market for water and wastewater services, the Deemed Contract will be the contract which applies between a non-household customer and a Licensed Provider when the two have not otherwise reached an agreement.

Prior to the Deemed Contract Scheme coming into effect, customers will still be liable to pay charges to a Licensed Provider where no contract has been actively agreed, however the terms and conditions that apply to that service are not clear.

The introduction of the Deemed Contract Scheme will benefit both customers and Licensed Providers as the terms that apply to the service will be clear, thus reducing the number of disputes. Customers will be protected via the customer protection measures in the Scheme whilst Licensed Providers will find it easier to bill customers and reduce bad debt.

Deemed Contracts

When does a Deemed Contract exist?

A Deemed Contract exists where water is supplied to, or sewerage is disposed of from, eligible premises by Scottish Water but no arrangements have been actively agreed between the non-household customer and a Licensed Provider. In these circumstances, a Deemed Contract will exist between the customer and the relevant Licensed Provider.

Who is the Customer?

The customer is the occupier of the non-domestic premises or, where the premises are unoccupied, the owner.¹

Who is the relevant Licensed Provider?

The relevant Licensed Provider is either the Licensed Provider who is allocated the Supply Point pursuant to the Market Code by the Central Market Agency (**CMA**) or the Licensed Provider who is registered to supply the premises on the day it is acquired by the customer. Supply Points can be allocated to a Licensed Provider in a variety of circumstances under the Market Code, including via the Provider of Last Resort mechanism² and the Gap Site allocation mechanism³.

Because Licensed Providers have enduring relationship with premises under the Market Code, customers who acquire existing premises will inherit the premises' current Licensed Provider. As there will not be an arrangement between the customer and that Licensed Providers, the Deemed Contract will apply.

How long will a Deemed Contract be in force?

A Deemed Contract will come into force on the day the Supply Point is allocated to the Licensed Provider at the CMA or the day the customer acquires the premises. There are a number of ways in which a Deemed Contract can end. A Deemed Contract will terminate on either the day the customer switches to another Licensed Provider⁴, the day the customer ceases to be the occupier or owner of the premises, the day the customer actively agrees an arrangement with a Licensed Provider in respect of the service or the day the service is permanently disconnected.

From what date will the Deemed Contract Scheme have effect?

The Deemed Contract Scheme will have effect from the date Sections 20A and 20B of the 2005 Act are brought fully into force. This will be by an Order by Scottish Ministers and such Order is expected to be made in January 2016.

¹ Subsection 20A(8) of the 2005 Act

² When a Licensed Provider exits the market without making provision for the transfer of its supply points, its supply points are randomly allocated to other Licensed Providers.

³ A Gap Site is a non-domestic premises which is receiving water and/or wastewater services from Scottish Water but is not registered in the market to a Licensed Provider. When identified Gap Site customers fail to select a Licensed Provider, they are randomly allocated to a Licensed Provider.

⁴ The Registration End Date

Key Terms of Scheme

In producing the Deemed Contract Scheme, the Commission has sought to follow two general principles, namely:

- existing measures are used as much as possible – rather than creating a new series of measures or requirements, we have drawn as much as possible on existing customer protection measures in the licence conditions and elsewhere. A list of relevant measures is attached as Appendix B.
- the Deemed Contract Scheme is not intended to be the default or model contract – it is not our intention that the Deemed Contract Scheme should be seen as a model of best practice towards which the Licensed Providers should converge their standard terms and conditions. The Scheme is intended to provide customers with a sufficient level of protection while they consider their options. We believe that it is in the best interest of customers if they actively consider what arrangements for their water and wastewater services are best for them, whether that is with their existing Licensed Provider or switching to another Licensed Provider, rather than remain on a Deemed Contract for an extended period of time.

The Deemed Contract Scheme provides that:

- the services the relevant Licensed Provider is required to provide to the customer under a Deemed Contract are the Default Services and these must comply with the Default Standards⁵. This ensures the existing customer protection measures are maintained. Complying with the Default Standards will ensure the Licensed Provider passes on any service standard payments it receives from Scottish Water in respect to the customer;
- the Licensed Provider is entitled to fix charges in respect of the services provided to the customer provided that such charges do not exceed the Default Maximum Tariff and are notified by the Licensed Provider to the customer prior to the issue of the first invoice. This allows Licensed Providers to place Deemed Contract customers on their standard charges if those charges are lower than the default tariffs. It also ensures customers on a Licensed Providers' standard terms do not unduly enjoy more favourable terms (i.e. lower charges) than customers on Deemed Contracts; the customer must be invoiced in arrears and must pay within the period set out in the invoice (which must not be less than 30 days). Again, this ensures customers on a Licensed Providers' standard terms do not enjoy more favourable terms (i.e. longer payment terms) than customers on Deemed Contracts;

⁵ The Default Services and Defaults Standards, along with the Default Maximum Tariff, are set from time to time by the Commission in the Default Directions.

- the Licensed Provider must issue the first invoice within 6 weeks of the later of the day the Deemed Contract comes into force or the day the Licensed Provider is notified that a new occupier has acquired the premises. This is to ensure that customers are made aware early that they are on a Deemed Contract and will need to pay for the services. Thereafter, the Licensed Provider will invoice the customer at least twice within any one-year period;
- the Licensed Provider must include a statement in their invoices advising the customer that they are on a Deemed Contract and are entitled to contact the Licensed Provider to actively agree an arrangement for services. This is to encourage customers (and Licensed Providers) to seek to move customers off Deemed Contracts;
- the Licensed Provider may not issue invoices in respect of services provided prior the date the Deemed Contract came into force or after the Deemed Contract has terminated (see How long will a Deemed Contract be in force?). This is intended as a protection against back billing;
- the Licensed Provider may seek to recover charges in respect of services provided during the term of the Deemed Contract, after the Deemed Contract has terminated. This term is required because charges are to be invoiced in arrears therefore the final invoice will be payable after the Deemed Contract has terminated;
- the Commission must publish a notice confirming when the Deemed Contract Scheme has been made and send a copy of the Scheme to every Licensed Provider, Scottish Water and any other person who requests it. Thereafter the Commission may revise the Scheme from time to time, providing we consult in accordance with Section 20B of the 2005 Act.

Comments

The Commission welcomes comments on the draft Deemed Contract Scheme, attached as Appendix A. Comments should be sent to the email address on the cover page or the below address by 30 October 2015.

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Appendix A – Draft Deemed Contract Scheme

The Water Industry Commission for Scotland (the **Commission**), in the exercise of the powers conferred upon it by section 20B of the Water Services etc. (Scotland) Act 2005 (the **2005 Act**) (and following consultation undertaken in accordance with section 20B(4) of the 2005 Act) hereby makes the following scheme:

Part A - Initial Provisions

1. This scheme makes provision in respect of any arrangements (a **Deemed Contract**) deemed by section 20A(4) of the 2005 Act to have been made between (i) a water services or (as the case may be) sewerage services provider (a **Licensed Provider**), and (ii) the occupier of particular eligible premises, or if the premises are unoccupied, the owner of the premises (the **Customer**), for the provision to the premises of the services to which subsection 20A(2) or (as the case may be) 20A(3) relates.
2. Words and expressions defined in the 2005 Act or in the Standard Licence Conditions determined by the Commission under paragraph 2(2) of schedule 2 to the 2005 Act (**SLCs**) shall (unless otherwise provided) have the same meaning when used in this scheme.
3. Part B of this scheme sets out the terms and conditions to be incorporated into any Deemed Contract pursuant to section 20A(5) of the 2005 Act.
4. Part C of this scheme specifies the basis on which a particular Licensed Provider is to be designated in connection with section 20B(2)(a) of the 2005 Act.
5. Pursuant to section 20B(2)(b) of the 2005 Act, Part D of this scheme (i) fixes, in respect of the services to which any Deemed Contract relates, the maximum charges that may be recovered by a Licensed Provider in respect of those services, and (ii) allows a Licensed Provider to set the particular charges that are to be recovered by it in respect of those services.

Part B - Terms and Conditions

6. The provisions of this Part B shall be construed in accordance with section 20A of the 2005 Act and shall come into effect, in relation to any Deemed Contract, as from the day on which that Deemed Contract comes into effect in accordance with section 20A(6) of the 2005 Act.
7. During the Deemed Contract Term (as defined below), the Licensed Provider will comply with all of its statutory and regulatory obligations including (but not limited to) obligations arising under: the SLCs; the 2005 Act and the terms of the Disconnections Document as defined in SLC A11; and
8. For the duration of the Deemed Contract Term (as defined below), the Licensed Provider shall provide to the Customer the relevant default services (as defined in SLC B1) at the relevant default standard (as defined in that condition) and the terms and conditions in the Deemed Contract shall apply in respect of such services only.
9. The Licensed Provider shall have no liability to the Customer in respect of, or arising from, the provision of (or any failure or deficiency in the provision of) water services or (as the case may be) sewerage services at any time other than during the Deemed Contract Term (as defined below).

10. The Customer shall pay the Licensed Provider the charges fixed by the Licensed Provider for the default services provided by it during the Deemed Contract Term (as defined below), providing such charges are fixed in accordance with paragraph 16 below.
11. The Licensed Provider shall invoice the Customer in arrears for the charges due for the services provided by it during the Deemed Contract Term (as defined below) and the Customer shall pay such charges within the period (being no less than thirty days) specified in the relevant invoice.
12. The Licensed Provider shall issue the Customer with its first invoice no later than six weeks following (i) the Applicable Day (as defined below), or (ii) the day the Licensed Provider is notified of a change of occupancy or ownership in respect of the premises, and shall invoice the Customer no less than two times per annum, thereafter.
13. Each invoice issued by the Licensed Provider shall include a statement which (i) identifies that the arrangement between the parties is governed by the Deemed Contract, and (ii) advises that the Customer may contact the Licensed Provider to actively agree an arrangement for the provision of water services or (as the case may be) sewerage services.

Part C - Designation of Licensed Provider

14. The party who shall be designated as the Licensed Provider in respect of a Deemed Contract with a particular Customer shall be the water (or as the case may be) sewerage services provider (i) to whom the supply point in respect of that Customer's premises has been allocated, in the circumstances specified by or under the Market Code, by or at the instance of the Central Market Agency, or (ii) who is registered in the supply point register as being the water services or (as the case may be) sewerage services provider for the supply point in respect of that Customer's premises on the day the Customer acquired the premises. The **Applicable Day** is the day the Supply point was so allocated to the Licensed Provider or the day the Customer acquired the premises (as relevant).
15. The Deemed Contract between the Customer and the Licensed Provider identified in accordance with paragraph 14 above shall terminate on the day (i) such Licensed Provider ceases to be registered in the supply point register as being the water services or (as the case may be) sewerage services provider for the supply point in respect of that Customer's premises (referred to in the market code as the "Registration End Date"), (ii) the Customer's occupancy or ownership (as the case may be) in the premises ceases, (iii) the Customer actively agree an arrangement with a licensed provider with regards to the provision of water (or as the case may be) sewerage services to the premises, or (iv) the water (or as the case may be) sewerage services provided to the premises are permanently disconnected in accordance with the Disconnections' Document as defined in SLC A11 (the **Termination Date**).

Part D - Fixing of Charges

16. A Licensed Provider shall be entitled to fix charges for the provision of the services to which the Deemed Contract relates, and demand and recover such charges, providing such charges (i) do not exceed the default maximum tariff (as defined in SLC B1), and (ii) are notified by the Licensed Provider to the Customer prior to the date of issue of the first invoice in accordance with paragraph 12 above. Such notice shall specify the

period during which such charges will apply, which period may commence before or after the date of the notice.

17. A Licensed Provider shall not be entitled to demand or recover from the Customer any charges in respect of water (or as the case may be) sewerage services provided (a) prior to the Applicable Day; or (b) after the Termination Date (the period between the Applicable Day and the Termination Date is referred to as the **Deemed Contract Term**).
18. A Licensed Provider's right to demand or recover charges from the Customer in respect of water or (as the case may be) sewerage services provided during the Deemed Contract Term shall survive termination of the Deemed Contract as described in paragraph 15.

Part E - Final Provisions

19. The Commission shall, as soon as practicable after making this scheme, (a) in a manner appropriate for bringing the scheme to the attention of persons likely to be affected by it, publish a notice stating its effect, and (b) send a copy of the scheme to (i) every water or sewerage services provider, (ii) Scottish Water, and (iii) any other person who requests it.
20. This scheme may be revised by the Commission from time to time in accordance with section 20B of the 2005 Act.
21. Enquiries regarding this scheme should be sent to enquiries@watercommission.co.uk or in writing to:

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Date: [XX] 2015

Appendix B – Related Documents

Below is a list of links to relevant documents referenced to in this consultation and the Deemed Contract Scheme.

- Standard Licence Conditions (SLCs)
<http://www.watercommission.co.uk/UserFiles/Documents/080118%20SLCs%20clean.pdf>
- Licence Register where copies of Licensed Providers' licences may be found with any Ordinary Licence Conditions
http://www.watercommission.co.uk/view_Register_of_licences.aspx
- Disconnections Document
<http://www.watercommission.co.uk/UserFiles/Documents/130520%20Disconnections%20Document%20-%20clean.pdf>
- Default Directions including the Default Maximum Tariffs, Default Services and the Default Standards
[http://www.watercommission.co.uk/UserFiles/Documents/140327%20Default%20directions%20\(clean\).pdf](http://www.watercommission.co.uk/UserFiles/Documents/140327%20Default%20directions%20(clean).pdf)
- Market Code
<http://www.cmascotland.com/kcfinder/upload/files/Market%20Code/June%202015-MCCP180/Market%20Code%20v28%20Clean.pdf>
- Sections 20A and 20B of the Water Services etc. (Scotland) Act 2005
<http://www.legislation.gov.uk/asp/2013/5/section/32/enacted?view=plain>