Part 8: Governance

8.

8.1 Scope

This Part 8 sets out the governance process for the Market Code and the change process for the Operational Code. In particular this Part confirms:

8.1.1 the membership of the Board;
8.1.2 the role of the Board;
8.1.3 the arrangements for meetings of the Board;
8.1.4 the mechanism for the Board taking decisions;
8.1.5 the Constitution of the TP;
8.1.6 the role of the TP;
8.1.7 the proceedings of the TP;
8.1.8 the processes to be followed by the TP for both Market Code Change Proposals and Operational Code Change Proposals; and
8.1.9 various ancillary matters.

8.2 Membership of the CMA

8.2.1 Each Original Applicant shall be a Member of CMA.

8.2.2

(i) On a Trading Party (other than an Original Applicant) satisfying the Admission Conditions that Trading Party shall apply to become a Member of CMA and shall sign and deliver to the CMA Secretary an application for membership in the form required by the Articles of CMA.

(ii) A Licensed Provider shall not be entitled to become a Member of CMA where that Licensed Provider is a member of a Licensed Provider’s Group where another member of that Group is a Licensed Provider and is already a Member of CMA (but for the avoidance of doubt this shall not prevent such parties from becoming Code Parties in accordance with the provisions of this Market Code).

8.2.3 DELETED 15 JULY 2008.
8.2.4 Each Member of CMA agrees with the other Members to exercise its rights as a Member so as to ensure that:

(i) CMA fulfils its duties under the Market Code and complies with the Articles of Association of CMA;

(ii) CMA carries out its duties under the Market Code in accordance with sound business practice and so as to break even in any Year;

(iii) CMA does not carry out any business or activity other than the duties set out in the Market Code;

(iv) CMA is independent of the interests of that Member and is not obstructed or interfered with in performing its duties by that Member; and

(v) the nominated Director of any Member shall take such action as is necessary to discharge any obligation of the Board under the Market Code to the maximum extent permissible provided always that no Director shall be obliged by this Section 8.3.1(v) to take action which would cause a Director to be in breach of any fiduciary or other duty of that Director to the CMA.

8.3 Management of CMA

8.3.1 The CMA Board

(i) DELETED 15 JULY 2008.

(ii)

(ii)(a) The Licensed Providers shall nominate up to two (2) Licensed Provider Directors in accordance with Section 8.3.1(iv) below.

The number of Licensed Provider Directors shall not exceed two (2) and when there is only one (1) Licensed Provider there shall
be only one (1) Licensed Provider Director and Section 8.3.1(iv) shall apply to the appointment of such single Licensed Provider Director, mutatis mutandis.

(ii)(b) Subject to 8.3.1(ii)(c) below, each Licensed Provider Director shall serve a fixed term of two years.

(ii)(c) In the event that there shall be two Licensed Provider Directors nominated to the Board of Directors of CMA in accordance with Section 8.3.1(iv) below for the period commencing 1 April 2018, one Licensed Provider Director shall serve a term of one year and one Licensed Provider Director shall serve a term of two years. The Licensed Provider Director who shall serve a term of two years shall be decided at the time of such nomination by the drawing of lots in a manner to be determined by the CMA Secretary. In the event that there is only one Licensed Provider Director nominated for the period commencing 1 April 2018, that Licensed Provider Director shall serve a term of two years.

(iii)(iii) On or before the Effective Date Scottish Water shall inform the CMA Secretary of its nominated Director in respect of the Transitional Charging Period. Thereafter Scottish Water shall by no later than 1st March in each year inform the CMA Secretary of its nominated Director in respect of the following Year (which for the avoidance of doubt may be the same individual as was nominated for the preceding year or the Transitional Charging Period). Each such nominated person shall have the requisite skills and experience and such nomination shall contain the name, address and details of the relevant skills and experience of the person to be appointed as a Director.

(iii)(iv) (a) The Licensed Provider Members shall meet during the Transitional Charging Period, on the Indicated Date and thereafter, not later than 1 March every year with
a view to nominating the Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate (which for the avoidance of doubt may be the same individuals as nominated for the Transitional Charging Period or the preceding Year). For the year commencing 1 April 2018, a maximum of two Licensed Provider Directors shall be nominated and for each year commencing on 1 April thereafter a maximum of one Licensed Provider Director shall be nominated. References to a Licensed Provider Directors in this sections 8.3.1(iv)(a)-(d) shall be construed accordingly.

(b) The CMA Secretary shall, in consultation with all Licensed Provider Members, fix the date of each Nomination Meeting and shall give each Licensed Provider Member not less than twenty (20) Business Days notice in writing of the date of such meeting. Each Licensed Provider Member shall send one suitably authorised representative to attend each Nomination Meeting or, where such Licensed Provider Member has no suitably authorised representative who is available to attend the Nomination Meeting, shall arrange for a suitably authorised representative to participate in the Nomination Meeting by way of a conference telephone call. In such circumstances, the Licensed Provider Member shall provide the CMA Secretary with notice in writing confirming that no suitably authorised representative is available to attend the Nomination Meeting, such notice to be received not less than forty eight (48) hours before the stated commencement time for the Nomination Meeting.
(c) Each Licensed Provider Member shall be entitled, by notice to the CMA Secretary given no earlier than ninety (90) days before the date of and not later than five (5) business days before the stated commencement time of the Nomination Meeting, to nominate one (1) individual to be Licensed Provider Director. Such nominated individual shall have the requisite skills and experience and such nomination shall contain the name, address and details of the relevant skills and experience of the nominated individual. Any such proposal to be valid shall be in writing and shall be accompanied by a written statement from the nominated individual stating that he is aware of the proposal and would be prepared to serve as a Licensed Provider Director if nominated.

(d) Notwithstanding Section 8.3.1(iv)(d) below, for the duration of any period after the Go Live Date during which any member does not have any Supply Points(s) Registered to it the vote of such member in person or by proxy shall not be counted.

(e) At each Nomination Meeting the CMA Secretary shall circulate to each Licensed Provider Member present a list of the names of all of the individuals nominated to serve as Licensed Provider Directors. Where a Licensed Provider Member’s authorised representative is participating in the Nomination Meeting by way of a conference telephone call as referred to Section 8.3.1(iv)(b) and the number of nominated individuals exceeds the number of Licensed Provider Directors to be nominated for the following Year, the CMA Secretary shall provide that Licensed Provider Member with a list of the names of
all of the individuals nominated to serve as Licensed Provider Directors and a voting paper (in the form to be provided pursuant to Section 8.3.1(iv)(d)(i)) no earlier than twenty four (24) hours before the stated commencement time for the Nomination Meeting. The Licensed Provider Member shall complete the voting paper in accordance with the provisions of Section 8.3.1(iv)(d)(ii) and return the voting paper to the CMA Secretary by fax or email no later than one (1) hour in advance of the stated commencement time for the Nomination Meeting (with the original to follow in the post). In the event that the number of nominated individuals equals the number of Licensed Provider Directors to be nominated for the Transitional Charging Period or the following Year as appropriate then those individuals shall duly become the nominated Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate. In the event that the number of individuals nominated to serve as Licensed Provider Directors exceeds the number to be elected and the Licensed Provider Members present at the Nomination Meeting (or participating by way of a conference telephone call) cannot agree unanimously on the identity of the Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate, the following procedures shall be applied in sequence:-

(i) each Licensed Provider Member shall be given a voting paper with the name of every individual nominated to serve as a Licensed Provider Director on it;
(ii) each Licensed Provider Member shall rank each nominated individual in order of preference by marking the nominated individual which is its first choice as Licensed Provider Director with the number “1” and continuing numbering sequentially in order of preference;

(iii) the CMA Secretary shall prepare a list ranking the nominated individuals in order according to the number of votes cast for each with the individual with the greatest number of votes at the head of the list;

(iv) the nominated individual whose name appears last on the list shall be removed from that list and shall take no further part in the nomination process. The CMA Secretary shall transfer the votes of all those Licensed Provider Members who voted for the nominated individual excluded in accordance with this Section 8.3.1(iv)(d)(iv) to the second preference nominated individual on the voting paper. The CMA Secretary shall then prepare a revised voting list and the procedure set out in this Section 8.3.1(iv)(d) shall be repeated as often as may be necessary until the number of nominated individuals equals the number of Licensed Provider Directors to be nominated at the Nomination Meeting;

(v) if, at any point in the procedure set out in Section 8.3.1(iv)(d) the votes cast in
favour of nominated individuals at the bottom of the voting list are equal then reference shall be made to second preferences and repeated in relation to each subsequent preference until either a nominated individual can be eliminated or the preferences are exhausted. In the event that preferences are exhausted the nominated individual to be removed from the voting list shall be decided by the drawing of lots in a manner to be determined by the CMA Secretary;

(vi) if the next preference expressed on a voting paper is for a nominated individual who has already been excluded then the next preference again shall be referred to;

(vii) once the procedure set out in this Section 8.3.1(iv)(d) results in a number of nominated individuals in the voting list equal to the number of Licensed Provider Directors to be nominated for the Transitional Charging Period or the following Year as appropriate then these individuals shall duly become the nominated Licensed Provider Directors for the Transitional Charging Period or the following Year as appropriate.

(f) A Nomination Meeting may consist of a conference between Licensed Provider Members who are not all in one place but who are able to speak to each of the others and to be heard by the others simultaneously unless it is necessary to apply the procedures set out
in Section 8.3.1(iv)(d)(i)-(vii) to select the nominated Licensed Provider Directors for the Transitional Charging Period or the following year as appropriate in which case each Licensed Provider Member must send one suitably authorised representative to attend the Nomination Meeting in person. Where it is necessary to apply the procedures set out in Section 8.3.1(iv)(d)(i)-(vii), the Nomination Meeting may consist of a conference between the Licensed Provider Members who are not all in one place but who are able to speak to each of the others and to be heard by the others simultaneously provided that any Licensed Provider Member who is not attending the Nomination Meeting in person shall only be permitted to take part in the Nomination Meeting if it has submitted voting papers to the CMA Secretary under Section 8.3.1(iv)(d) in advance of the Nomination Meeting.

(v) (a) With the exception of the first three (3) non-executive Directors, who shall be nominated by the Commission, non-executive Directors shall be nominated by the Chairman, having regard to the recommendations of the Nominations Committee.

(b) The Nominations Committee shall provide its recommendations to the Chairman in accordance with Regulation 8.4 of the Articles of Association of CMA.

(c) Subject to Section 8.3.1(v)(d) below, non-executive Directors shall be appointed for a fixed term not exceeding 3 years and shall be eligible for re-appointment following expiry of their initial or any subsequent term.
(d) A non-executive Director who has held office for nine consecutive years shall, after his ninth year in office, be subject to annual re-appointment.

(e) A person appointed as a non-executive Director shall hold office for the period of his term of appointment unless he resigns or is removed from office in accordance with the Articles of Association of CMA.

(f) The Chairman shall ensure that there are at least two (2) non-executive Directors on the Board at all times. There shall be no limit on the number of non-executive Directors who may be appointed to the Board at one time.

(vi) The appointment of any person nominated under Section 8.3.1(iii) as the Director nominated by Scottish Water shall take effect on commencement of the Year for which they are so nominated at which time the person previously nominated as the Scottish Water Director shall cease to hold office. The appointment of any person to be a Licensed Provider Director under Section 8.3.1(iv)(d) shall take effect on commencement of the Year following such nominations under Section 8.3.1(iv)(d). Any person nominated under Section 8.3.1(v) to be a non-executive Director shall be appointed for such term as is determined pursuant to Sections 8.3.1(v)(c) and 8.3.1(v)(d).

(vii) DELETED 15 JULY 2008.

8.3.2 Directors

(i) DELETED 15 JULY 2008

(ii) Removal of Directors

(a) Scottish Water may elect to remove and replace the Director nominated by it by giving notice to the CMA Secretary, such notice must contain that Member's
replacement nomination in accordance with Section 8.3.2(iii) below.

(b) The Licensed Providers may by unanimous agreement between themselves elect to remove and replace any Director nominated by them by giving notice to the CMA Secretary, such notice must contain the Licensed Providers’ replacement nomination(s) in accordance with Section 8.3.2(iii) below.

(iii) Where a Director nominated by Scottish Water or the Licensed Providers ceases to be a Director by reason of resignation, removal (including under Section 8.3.2(ii)(a) or (b)), death, incapacity or any other reason in accordance with the provisions of the Articles of Association of CMA or the UK Companies Acts (as shall be amended from time to time), Scottish Water or the Licensed Provider Members (as appropriate) shall nominate a replacement Director (such nomination to include the name, address, date of birth and relevant skills and experience of such nominee) in accordance with Section 8.3.1(iii) or 8.3.1(iv) (as appropriate).

8.3.3 DELETED 15 JULY 2008.
8.3.4 DELETED 15 JULY 2008
8.3.5 DELETED 15 JULY 2008

8.4 Role of the CMA Board

The Board shall carry out any activities within the scope of the Market Code Objectives and consistent with the Market Code Principles including the following activities:

8.4.1 authorise the appointment, removal and remuneration of the Market Auditor and agreement of an audit plan by the CMA with the Market Auditor;
8.4.2 approve the CMA Budget and proposed CMA Charges;
8.4.3 review and approve any Market Audit Reports;
8.4.4 confirm satisfactory completion of Market Assurance Processes by any Trading Party;
8.4.5 provide a forum for discussion among Code Parties regarding the operation and development of the Central Systems and the Market Code;
8.4.6 report to the Commission and the Market Auditor on the activities of the Board;
8.4.7 authorise enforcement action in respect of a Trading Party or authorise the issue of a Termination Notice to a Trading Party; and
8.4.8 approve reports and the release of data in accordance with the Market Code.
8.5 DELETED 15 JULY 2008
8.6 The Technical Panel (TP)
8.6.1 There is hereby established a panel which shall be constituted in accordance with the further provisions of this Section 8.6.
8.6.2 The TP shall comprise the following TP Members:
   (i) a person appointed on behalf of each Original Applicant (except the CMA), who shall be appointed by each Original Applicant giving notice to the TP Secretary of the name and address of its appointee;
   (ii) subject to Section 8.6.2(iii) a person appointed on behalf of each Trading Party (other than the Original Applicants), who shall be appointed by each Trading Party giving notice to the TP Secretary of the name and address of its appointee on such Trading Party satisfying the Admission Conditions;
   (iii) a Licensed Provider shall not be entitled to appoint a member to the TP where that Licensed Provider is a member of a Licensed Provider’s Group where another member of that Group is a Licensed Provider and has already appointed a member to TP.
8.6.3 The CMA Chairman shall also act as TP chairman. The TP chairman shall be entitled to attend and chair all meetings of the TP but not to vote. If the CMA Chairman is unable to be present at a meeting of the TP he may appoint an alternate to act as chairman of that meeting.
8.6.4 The CEO of the CMA and a person appointed to represent the Commission shall both be entitled to attend at and speak at all meetings of the TP but not to vote (“Affiliated Member”).
8.6.5 There shall be a secretary to the TP who shall be appointed by the CMA.
8.6.6 The TP shall carry out the following activities:
(i) keep the contents of the Market Code under review to ensure that it continues to reflect the Market Code Objectives and Market Code Principles and where the TP believes that a Market Code Change would result in the Market Code better reflecting the Market Code Objectives and Market Code Principles it shall make a Market Code Change Proposal in accordance with its power under Section 8.7.1;

(ii) consider and vote on any Market Code Change Proposal and/or any Operational Code Change Proposal;

(iii) consider and provide its views on any Commission Change;

(iv) consider and provide its views on the draft CMA Budget; and

(v) receive reports on compliance by Code Parties as specified in Sections 6.2.7 and 6.5.1.

8.6.7 A person shall cease to hold office as a TP Member if:

(i) he resigns his office by notice delivered to the TP Secretary; or

(ii) if the TP resolves that he should cease to hold office, and upon any person ceasing to hold office as a TP Member a new TP Member shall be appointed as appropriate in accordance with Section 8.6.2.

8.6.8 A person appointed as a TP Member, when acting in that capacity:

(i) shall act impartially and shall be guided by the Market Code Principles and Market Code Objectives;

(ii) shall not be representative of and shall act without undue regard to the particular interests of the body or person by whom he was appointed as a TP Member;

(iii) shall not be appointed as a TP Member unless he shall have first:

(a) confirmed in writing to the CMA for the benefit of all Code Parties that he agrees to act as a TP Member in accordance with the Market Code and acknowledges the requirements of this Section 8.6.8; and
(b) where that person is employed by a Code Party, provided to the TP Secretary a letter from his employer agreeing that he may act as a TP Member and that the requirement in Section 8.6.8(ii) shall prevail over his duties as an employee.

8.6.9 Where the chairman of the TP (on the application of a TP Member) agrees in advance in writing, a TP Member may appoint a person to be his alternate, and may remove a person so appointed by giving notice of such appointment or removal to the TP Secretary. Any alternate appointed in accordance with this Section 8.6.9 shall be entitled to attend, speak and vote at any meeting of the TP where the TP Member who appointed him is not present. Such alternate shall cast one (1) vote for the TP Member by whom he was appointed in addition to any vote which he may hold if he is also a TP Member. All alternates must act in accordance with the provisions of Section 8.6.8.

8.6.10 Meetings of the TP shall be held at regular intervals and at least every three (3) months at such time and place in Scotland as the TP shall decide. The TP Secretary shall also convene a meeting of the TP before the next regular meeting if required in order to consider any Market Code Change Proposal or Operational Code Change Proposal.

8.6.11 Any meeting of the TP shall be convened by the TP Secretary by notice to each TP Member and any alternate appointed in accordance with Section 8.6.9, setting out the date, time and place of the meeting and (unless the TP has otherwise decided) giving at least five (5) Business Days’ notice of the meeting and accompanied by an agenda and such supporting papers as are necessary. A copy of such notice and papers shall also be sent to the Commission and the CMA.

8.6.12 With the consent of all TP Members and the chairman of the TP the requirements of Section 8.6.11 may be waived or modified.

8.6.13 A meeting of the TP may consist of a conference between TP Members and the chairman of the TP who are not all in one place, but who are able to speak to each of the others and to be heard by each of the others simultaneously. A TP Member taking part in such a conference or telephone call shall be deemed to be present in person.
at the meeting and shall be entitled to vote and be counted in the quorum accordingly. In this case there is no requirement that the TP Members are in Scotland.

8.6.14 No business shall be transacted at any meeting of the TP unless a quorum is present at the meeting. A quorum shall be three (3) TP Members, each of whom must be entitled to vote at that meeting, and the chairman of the TP (or his alternate). Where there is only one Licensed Provider the quorum shall be two (2) TP Members who are all entitled to vote at that meeting and the chairman of the TP (or his alternate).

8.6.15 At any meeting of the TP any matter to be decided shall be put to a vote of TP Members upon the request of the chairman of the TP or any TP Member. Each TP Member shall cast one (1) vote unless:

(i) such TP Member represents a Trading Party that does not hold a Permanent Licence; or

(ii) such TP Member is nominated as member on behalf of more than one (1) Trading Party, in which case such person shall cast one (1) vote for each Trading Party by which he has been nominated.

8.6.16 Any matter to be decided shall be decided by:

(i) a unanimous vote of those votes cast at the meeting by TP Members (and an abstention shall not be counted as a cast vote); or

(ii) being voted for by a Qualifying Majority.

For the purposes of this Section 8.6.16 a Qualifying Majority shall be calculated as follows:

<table>
<thead>
<tr>
<th>Total No. of Licensed Providers represented on the TP at the time of the Vote</th>
<th>Qualifying Majority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1 member nominated by Licensed Providers</td>
</tr>
<tr>
<td>2 or 3</td>
<td>2 members nominated by Licensed Providers</td>
</tr>
</tbody>
</table>
8.6.17 A resolution in writing signed by or on behalf of all of the TP Members entitled to vote in respect of the matter which is the subject of the resolution shall be valid and effectual as if it had been passed at a duly convened and quorate meeting of the TP and such an instrument may consist of several instruments in like form each signed by or on behalf of one or more members of the TP.

8.7 Market Code Change Process

8.7.1 Market Code Change Proposals

(i) A Market Code Change Proposal may be made by:-

(a) any Trading Party;
(b) the TP; or
(c) the CMA.

(ii) A Market Code Change Proposal made pursuant to Section 8.7.1(i) will be submitted in writing to the TP Secretary and will contain the following information:-

(a) the name of the Proposer;
(b) a description (in reasonable but not excessive detail) of the issue or defect which the Market Code Change Proposal seeks to address;
(c) a description (in reasonable but not excessive detail) of the Market Code Change Proposal and of its nature and purpose including confirmation of how the Market Code Change Proposal falls within the Market Code
Objectives and is consistent with the Market Code Principles;

(d) draft legal text for those parts of the Market Code which would require change or would otherwise be affected by the Market Code Change Proposal;

(e) where the Proposer considers that the Market Code Change Proposal is urgent, a statement of that fact and an indication of why the Proposer considers this to be the case;

(f) where possible, an indication of the impact of the Market Code Change Proposal on the Operational Code, Wholesale Services Agreements, any Licence or any other industry code, agreement or document; and

(g) where possible, an indication of the impact of the Market Code Change Proposal on the Central Systems and any interfacing systems used by Trading Parties.

(iii) No Market Code Change Proposal may purport to change or affect the role, rights or obligations of the Commission under the Market Code.

(iv) Where a Market Code Change Proposal is received by the TP Secretary more than ten (10) Business Days prior to the next meeting of the TP, the TP Secretary will place the Market Code Change Proposal on the agenda of the next TP meeting, and otherwise will place it on the agenda of the next succeeding TP meeting. The TP Secretary will also send a copy of the Market Code Change Proposal to each TP Member, the TP chairman and the Affiliated Members.

(v) The TP will consider, evaluate and determine whether or not to approve each Market Code Change Proposal as soon as reasonably practicable, taking due account of its complexity,
importance and urgency and having regard to whether or not such proposal is within the Market Code Objectives and consistent with the Market Code Principles.

(vi) The TP may (but shall not be obliged to) require impact assessments to be conducted to identify, without limitation, potential cost implications and practical issues in adopting any Market Code Change Proposal.

(vii) The TP may (but shall not be obliged to) determine to conduct a consultation on a Market Code Change Proposal with any such persons who may properly be considered to have an appropriate interest in the Market Code Change Proposal. Any consultation will be conducted by the TP Secretary.

(viii) Subject to Section 8.7.1(x) a decision of the TP taken in accordance with Section 8.6.15 will constitute approval of the Market Code Change Proposal by the TP. The TP shall recommend in the approval the time and date on which the Market Code Change Proposal is to be implemented, and shall approve draft legal text amending the Market Code.

(ix) The TP Secretary will promptly provide a Final Report in respect of each Market Code Change Proposal to each Code Party and the Commission.

(ix)A Following receipt of the Final Report from the TP under Section 8.7.1(ix), the Commission shall conduct a consultation on a Market Code Change Proposal prior to exercising its rights under Sections 8.7.1(x) and 8.7.1(xi). Such consultation shall be conducted within a period of no less than five (5) Business Days. The Commission shall be entitled to conduct such a consultation notwithstanding that the TP has conducted a consultation under Section 8.7.1(vii) in relation to that Market Code Change Proposal. The Commission shall consult with each Code Party and any such persons who the Commission considers are appropriate in light of the nature of
the Market Code Change Proposal. The provisions of this Section 8.7.1(ix) A shall not apply to (i) the process for a Commission Change to the Market Code under Section 8.7.2 or (ii) the process for an Urgent Change to the Market Code under Section 8.9.1.

(x) The Commission shall be entitled to block any TP decision to approve any Market Code Change Proposal taken in accordance with this Section 8.7 if the Commission considers that the decision is not within the Market Code Objectives or is not consistent with the Market Code Principles. Such a decision must be notified to:

(a) each TP Member;
(b) the TP Secretary;
(c) the TP chairman; and
(d) the CMA,

within thirty (30) Business Days of the date on which the Commission receives the Final Report relating to any Market Code Change Proposal.

(xi) A Market Code Change Proposal approved by the TP will be an "Approved Change" if and when the Commission either gives its consent in writing to the TP to such Market Code Change Proposal or the Commission fails to notify its objection in writing to the TP within thirty (30) Business Days of the date on which the Commission received the Final Report in respect of such Market Code Change Proposal.

(xii) The Market Code will be amended in accordance with the terms of the Approved Change.

(xiii) Any Change to the Market Code will take effect from the time and date specified in the Approved Change.

(xiv) The TP Secretary will forthwith notify:

(a) the Affiliated Members;
(b) each TP Member; and
(c) the TP chairman,
of the Change and the effective date of the Change.

8.7.2 Commission Changes to the Market Code

(i) If and to the extent that the Commission considers that making
    a Change is necessary in the interests of securing the orderly
    participation of Trading Parties in the provision of Services and
    would be consistent with the Market Code Principles, the
    Commission may require that a Change be made to the Market
    Code (a “Commission Change”)

(ii) The Commission may, at its discretion, consult with the TP and
     the CMA in advance of requiring a Commission Change where
     it considers it appropriate to do so.

(iii) The Market Code will be amended in accordance with the
     terms of the Commission Change.

(iv) Any Change to the Market Code will take effect from the time
     and date specified in the Commission Change.

(v) The TP Secretary will forthwith notify:
    (a) the CMA;
    (b) each TP Member; and
    (c) the TP chairman,
of the Change and the effective date of the Change.

8.8 Operational Code Change Process

8.8.1 Operational Code Change Proposal

(i) An Operational Code Change Proposal may be made by any
    Trading Party.

(ii) An Operational Code Change Proposal made pursuant to
     Section 8.8.1(i) will be submitted in writing to the TP Secretary
     and will contain the following information:-
    (a) the name of the Proposer;
    (b) a description (in reasonable but not excessive detail)
        of the issue or defect which the Operational Code
        Change Proposal seeks to address;
(c) a description (in reasonable but not excessive detail) of the Operational Code Change Proposal and of its nature and purpose including confirmation of how the Operational Code Change Proposal falls within the Operational Code Objectives and is consistent with the Operational Code Principles;

(d) draft legal text for those parts of the Operational Code which would require change or would otherwise be affected by the Operational Code Change Proposal;

(e) where the Proposer considers that the Operational Code Change Proposal is urgent, a statement of that fact and an indication of why the Proposer considers this to be the case; and

(f) where possible, an indication of the impact of the Operational Code Change Proposal on the Market Code, Wholesale Services Agreements, any Licence or any other industry code, agreement or document.

(iii) Where an Operational Code Change Proposal is received by the TP Secretary more than ten (10) Business Days prior to the next meeting of the TP, the TP Secretary will place the Operational Code Change Proposal on the agenda of the next meeting of the TP, and otherwise will place it on the agenda of the next succeeding TP meeting. The TP Secretary will also send a copy of the Operational Code Change Proposal to each TP Member, the TP chairman and the Affiliated Members.

(iv) The TP will consider, evaluate and determine whether or not to approve each Operational Code Change Proposal as soon as reasonably practicable, taking due account of its complexity, importance and urgency and having regard to whether or not such proposal is within the Operational Code objectives and consistent with the Operational Code Principles.
(v) The TP may (but shall not be obliged to) require impact assessments to be conducted to identify, without limitation, potential cost implications and practical issues in adopting any Operational Code Change Proposal.

(vi) The TP may (but shall not be obliged to) determine to conduct a consultation on an Operational Code Change Proposal with any such persons who may properly be considered to have an appropriate interest in the Operational Code Change Proposal. Any consultation will be conducted by the TP Secretary.

(vii) The TP Secretary will promptly provide a Final Report in respect of each Operational Code Change Proposal to each Code Party and the Commission.

(viii) Subject to Section 8.8.1(ix), a decision of the TP taken in accordance with Section 8.6.15 will constitute approval of the Operational Code Change Proposal by the TP. The TP shall recommend in the approval the time and date on which the Operational Code Change Proposal is to be implemented, and shall approve draft legal text amending the Operational Code.

(viiiA) Following receipt of the Final Report from the TP under Section 8.8.1(vii) the Commission shall conduct a consultation on an Operational Code Change Proposal prior to exercising its rights under Sections 8.8.1(ix) and 8.8.1(x). Such consultation shall be conducted within a period of no less than five (5) Business Days. The Commission shall be entitled to conduct such a consultation notwithstanding that the TP has conducted a consultation under Section 8.8.1(vi) in relation to that Operational Code Change Proposal. The Commission shall consult with each Code Party and any such persons who the Commission considers are appropriate in light of the nature of the Operational Code Change Proposal. The provisions of this Section 8.8.1(viii) A shall not apply to (i) the process for a Commission Change to the Operational Code.
under Section 8.8.2 or (ii) the process for an Urgent Change to the Operational Code under Section 8.9.1.

(ix) The Commission shall be entitled to block any TP decision to approve any Operational Code Change Proposal taken in accordance with this Section 8.8 if the Commission considers that the decision is not within the Operational Code Objectives or is not consistent with the Operational Code Principles. Such a decision must be notified to:-

(a) each TP Member;
(b) the TP Secretary;
(c) the TP chairman; and
(d) the CMA,
within thirty (30) Business Days of the date on which the Commission receives the Final Report relating to any Operational Code Change Proposal.

(x) An Operational Code Change Proposal approved by the TP will be an “Approved Change” if and when the Commission either gives its consent in writing to the TP to such Operational Code Change Proposal or the Commission fails to notify its objection in writing to the TP within thirty (30) Business Days of the date on which the Commission received the Final Report in respect of such Operational Code Change Proposal.

(xi) The Operational Code will be amended by Scottish Water in accordance with the terms of the Approved Change and a new version will be published by Scottish Water.

(xii) Any Change to the Operational Code will take effect from the time and date specified in the Approved Change.

(xiii) The TP Secretary will forthwith notify:-

(a) the Affiliated Members;
(b) each TP Member; and
(c) the TP chairman,
of the Change and the effective date of the Change.
8.8.2 Commission Changes to the Operational Code

(i) If and to the extent that the Commission considers that making a Change is necessary in the interests of securing the orderly participation of Trading Parties in the provision of Services and would be consistent with the Operational Code Principles, the Commission may require that a Change be made to the Operational Code (a "Commission Change").

(ii) The Commission may, at its discretion, consult with the TP and the CMA in advance of requiring a Commission Change where it considers it appropriate to do so.

(iii) The Operational Code will be amended by Scottish Water in accordance with the terms of the Commission Change and a new version will be published by Scottish Water.

(iv) Any Change to the Operational Code will take effect from the time and date specified in the Commission Change.

(v) The TP Secretary will forthwith notify:

(a) the CMA;
(b) each TP Member; and
(c) the TP Chairman,

of the Change and the effective date of the Change.

8.9 Urgent Change

8.9.1 In the event that a Market Code Change Proposal or Operational Code Change Proposal is deemed by the CEO at any time to be urgently required to maintain the integrity of the Central Systems (an "Urgent Change"), the CEO shall make such changes to the procedure for evaluating such Urgent Change under this Part 8 as he deems appropriate, provided always that the TP shall be required to consider, evaluate and determine whether or not to approve any Urgent Change. In doing so the CEO shall keep the TP and the Board advised of such changes.

8.9.2 Any modification to the process by which an Urgent Change may be determined in terms of Section 8.9.1 above shall be subject to ratification by the Commission prior to any decision whether or not to approve any urgent change is made by the TP. In the event that the Commission does
8.10 Liability

8.10.1 Director Indemnity

Subject to the provisions of the Companies Acts (as defined in section 744 of the Companies Act 1985 as amended), but without prejudice to any indemnity to which the person concerned may otherwise be entitled, every Director or other officer of CMA (other than any person (whether an officer or not) engaged by CMA as auditor) shall be indemnified out of the assets of CMA against any liability incurred by him in respect of any allegations or claims for negligence, default, breach of duty or breach of trust in relation to the affairs of CMA, provided that this Clause Section 8.10.1 shall be deemed not to provide for, or entitle any such person to, indemnification to the extent that it would cause this Clause Section 8.10.1, or any element of it, to be treated as void under the Companies Act 1985 (as amended) or otherwise under the Companies Acts. The CMA shall, upon request, provide the relevant Director with a written indemnity to that effect. For the avoidance of doubt nothing in this Section 8.10.1 shall be deemed to allow any Director recovery of personal charges and expenses incurred pursuant to his appointment as a Director.

8.10.2 The CMA shall recover all costs incurred or suffered by it in providing indemnities to each Director in accordance with Section 8.10.1 by way of CMA Charges.

8.10.3 Notwithstanding Sections 8.10.1 and 8.10.2, the CMA can, if it deems appropriate, insure each Director (including the Chairman and the CEO), and/or the CMA Secretary against any and all Costs properly incurred or suffered by him in relation to the Board or his office as a Director or as CMA Secretary or the due exercise by him of his powers, duties and responsibilities in that office and all claims, demands or proceedings arising out of or in connection with the same. The cost of any such
insurance taken out under this Section 8.10.3 to the CMA shall be included in the CMA Budget and recovered from Trading Parties by way of CMA Charges.

8.10.4 **TP Member Indemnity**

All Code Parties agree that the CMA shall indemnify and keep indemnified (the costs of such indemnity to be funded in accordance with Section 8.10.5), TP Members in respect of all Costs properly incurred or suffered by such person when acting in or in connection with his office under the Market Code, or in what he in good faith believes to be the proper exercise and discharge of his powers, duties, functions and discretions of that office in accordance with the Market Code, and all claims, demands and proceedings in connection therewith other than any such Costs incurred or suffered as a result of the wilful default or bad faith of such TP Member. The CMA shall, upon request, provide the relevant TP Member with a written indemnity to that effect. For the avoidance of doubt nothing in this Section 8.10.4 shall be deemed to allow any party recovery of personal charges and expenses incurred pursuant to his appointment as a TP Member.

8.10.5 The CMA shall recover all Costs incurred or suffered by it in providing indemnities to each TP Member in accordance with Section 8.10.4 by way of CMA Charges.

8.10.6 Notwithstanding Sections 8.10.4 and 8.10.5, the CMA can, if it deems appropriate, insure each TP Member against any and all Costs properly incurred or suffered by him in relation to the TP or his office as a TP Member or the due exercise by him of his powers, duties and responsibilities in that office and all claims, demands or proceedings arising out of or in connection with the same. The cost of any such insurance taken out under this Section 8.10.6 to the CMA shall be included in the CMA Budget and recovered from Trading Parties by way of CMA Charges.