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**THE OPERATIONAL CODE – KEY ISSUES**

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## A. BACKGROUND

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In its first consultation on the principles of licensing, the Water Industry Commission for Scotland (the Commission) in April 2005 stated that the water industry in Scotland would benefit from having a network code, similar to those that are used in other network based utilities. The network code would incorporate rules and procedures for:

- connections to the water and sewerage networks;
- network planning; and
- network operations.

Scottish Water, as the network operator, would be responsible for development of the network code.

## B. 2006 DIRECTIONS

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Subsequently, in the Water Services (Codes and Services Directions) of 31 October 2006, the Commission had developed its thinking further by issuing a direction in respect of the content of the initial Operational Code.

The Commission stated that the Code to be developed by Scottish Water would include, but not necessarily be limited to, provisions for:

- customer classification – which would include the obligation on retailers to maintain lists of particular categories of customers known as sensitive customers;
- new connections – which would include details of the information required by Scottish Water to accommodate new connections to its network;
- water quality sampling – which would include processes for making visits to eligible premises to monitor compliance with the applicable water quality rules or to investigate a water quality complaint;
- metering – which would include procedures for metering such as the installation, removal and replacement of meters, meter accuracy checks and fault reporting and repairs;
- contacts, enquiries and complaints – which would include (1) processes for the handling of enquiries by retailers and Scottish Water and procedures for handling complaints relating to services for which the wholesale charges were levied, (2) details of the information to be collected from customers, and (3) a timetable for responses from Scottish Water that will allow retailers to respond to their customers;
- planned activities – this would include procedures for short and long term planning activities that would be undertaken by Scottish Water;
- unplanned changes to services – this would include the operational arrangements that would apply in the event of changes in the nature of the water and/or sewerage services provision including procedures to be adopted in an emergency situation (which would include details of the information to be exchanged with retailers, methods of such communication and the timing of any such communications; and
- trade effluent control – which would include procedures for obtaining a modification of trade effluent consents, trade effluent monitoring, pollution incidents and the discontinuation of trade effluent services and termination of trade effluent consents.

## C. 2007 DIRECTIONS

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The subsequent Directions issued by the Commission in September 2007 gave two main objectives for the Operational Code:

1. to establish operational processes which facilitate the performance by Scottish Water and retailers of their respective functions in relation to the provision of licensed services; and



2. to make provision for any related transitional, supplemental and ancillary matters.

Underlying these objectives were a number of principles:

1. **Proportionality** – rules and arrangements established by or under each core industry document should be proportionate within the context of their respective objectives;
2. **Transparency** – rules and arrangements under the core documents should be concise, fully expressed, well-structured and readily accessible to both existing and perspective retailers;
3. **Simplicity, cost effectiveness and security** – the systems and processes established by the Operational Code should be as straightforward and as economical as possible (whilst being capable of development over time) and should contain appropriate data integrity and security controls;
4. **Barriers to entry** – the rules and other arrangements established by or under each core industry document should not create barriers to entry in respect of the market for the provision of licensed services;
5. **Customer contact** – the rules and arrangements established by or under the Operational Code should ensure that, save in exceptional circumstances, the primary contact with each eligible customer should be interfaced through the relevant retailer;
6. **Non-discrimination** – the rules and/or arrangements established by or under each core industry document should not unduly discriminate, or create undue discrimination between retailers; and
7. **Core functions** – the rules and/or arrangements established by or under each core industry document should not be detrimental to the exercise of Scottish Water’s core functions.

By the time of market opening in 2008, the Commission was content that the Operational Code had met these objectives and principles. How had this been achieved?

## D. INDUSTRY CONSULTATION

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Consultation with the Industry was achieved through three principal means; namely:

- round-table discussion of the content of the Operational Code directly with Scottish Water and its advisors;
- through the medium of the licensing framework implementation group (“LFIG”) which was a stakeholder group which took on as part of its responsibility, helping to develop the Operational Code; and
- through a series of written consultations issued by the Commission and, in turn, documented responses from the Commission which contained the Commission’s responses on issues raised by the industry.

The process of written consultations and responses served as a “running commentary” on the key issues that were concerning stakeholders and the Commission. Just to give an example of a typical consultation response in respect of, in this case, new connections;

A number of respondents had commented on the Operational Code processes for new connections. Some of these suggested that further clarification was required within the Code regarding, for example, the process by which Scottish Water will calculate charges for new connections and in which instances Scottish Water will adopt mains laid by an applicant; how the retailer becomes involved in the design of the connection (citing a reference to the retailer design) and the arrangements following completion of the physical connection (e.g. if the development is wholly household, wholly non-household or mixed).

In response the Commission considered that some of these issues would be more appropriately addressed in other documents. Charging issues, for instance, should be addressed in Scottish Water’s charging scheme, whilst steps involving registration or de-



registration of supply points (i.e. what happens after the physical connection is complete) would be better addressed by the Market Code arrangements. Similarly, the Commission believed that inappropriate technical details regarding different types of connection should not be included in the Operational Code. Instead, interested parties should continue to refer to Scottish Water's "guide for obtaining new water and waste water connections" (available on Scottish Water's website) for such detailed information.

This example illustrates a couple of points worth noting regarding the Operational Code. As referred to later, the Operational Code is meant to be an operational document and not a charging document and therefore the Operational Code points to the wholesale charges scheme for payment issues.

The second point is in reference to the continuance of Scottish Water's own guidance to its customers. The Operational Code was not intended to supplant or replace Scottish Water's own internal processes where these were consistent with the Operational Code, hence the continued publication of guides such as the one referred to above in terms of giving retailers and end-customers further information regarding the process.

## E. THE OPERATIONAL CODE

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The Operational Code was effectively another tangible emanation of the split in the water industry in Scotland between retail and wholesale. It also helped to further define the split of Scottish Water's retail and wholesale activities.

The guiding premise in drafting the Operational Code was that the retailer would have, as far as possible, the exclusive contact with customers and that Scottish Water, as the wholesaler, would only have contact directly with the retailer's customers in certain narrowly defined instances, e.g. emergencies. The Operational Code is designed from an operational perspective rather than from an overly legalistic viewpoint. As far as possible "layman's" language was used to make it more accessible. Its purpose was to achieve the codification of a number of existing processes which operated in relation to the network and to bring those separate processes into one document, which would allow retailers to readily understand their interaction with Scottish Water and, in turn, with their own customers.

To illustrate the practical nature of the Operational Code, it is split up into topic headings, for example, "metering" and under each topic there are a number of itemised steps in the process which lead the Licensed Provider (i.e. the retailer) from start to finish.

Invariably, a number of the processes start with the following "Step 1" – "The non-household customer appoints a Licensed Provider". In effect, this embeds into the document the position that the Licensed Provider has in the market in terms of customer facing activities. It also provides an easy check in terms of wholesaler/end-customer involvement which in many ways is self-policing. The consequence being that if a non-household customer gets in touch with Scottish Water direct and the subject matter is relevant, e.g. new connections, the first question that Scottish Water should ask is "have you appointed a licensed provider?".

To emphasise the practical nature of the Operational Code, it also contains, in its latest version, fourteen forms which are largely required by the wholesaler to be used in relation to the relevant retail activities. For example, where there is an application to connect to the public water system supply, the content of the form is specified in the Operational Code.



## F. KEY PROVISIONS

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The version of the Operational Code issued at market opening in 1998 is in terms of key headings quite similar to the original 2006 Direction subject headings set out by the Commission.

There are now a total of 27 processes specified in the Operational Code which include provision for:

- non-household customer classification – which includes the obligation on each Licensed Provider to maintain lists of sensitive customers. Such customers such as hospitals are important in terms of notification to the wholesaler in, for example, an emergency situation where Scottish Water needs to have the information in order to prioritise its response to such customers;
- new connections (processes 1 – 5) – this includes details of the information required by Scottish Water to accommodate new connections to the network;
- water quality sampling/water bye-laws (processes 6 and 7) – this includes processes for making visits to non-household customers' premises to monitor compliance with applicable water quality rules, water bye-laws and to investigate water quality complaints. Although in certain instances this allows direct interaction between Scottish Water and the end-customer, it is always done either with the prior or contemporary knowledge of the customers' Licensed Provider;
- metering (processes 8 – 12) – this involves procedures for metering such as installation, removal and replacement of meters, meter accuracy checks and fault reporting and repairs;
- contacts, enquiries and complaints (processes 13 – 18) – these include the processes specified in the 2006 Directions regarding how these issues are dealt with by Scottish Water;
- planned activities (process 19) – this includes procedures for short and long term planning undertaken by Scottish Water;
- unplanned changes to services (processes 20 and 21) – this includes the operational arrangements that will apply in the event of changes in the nature of the water and/or sewerage service provision. In effect, these are the provisions dealing with emergencies, whether these are specified in the legislation or, for example, result from flooding from sewers. The process deals with emergency planning, the declaration of an emergency and the implementation of emergency plans. There is also an interaction with the wholesale services agreement whereby certain timings are specified regarding emergency response. Failure to meet these timings is a breach of the service standard specified in the wholesale services agreement; and
- allowances (process 26 to 27) – this includes procedures for applying for a fire-fighting allowance and a non-return to sewer allowance and for (1) modification of the Operational Code and (2) resolving any disputes in respect of the Operational Code

### How is the Operational Code governed?

The provisions of the Operational Code governance are set out in the Operational Code. It was felt that both documents being closely linked, it was sensible to have one set of governance provisions dealing with both codes rather than have unnecessary duplication. There will be a separate session on the Market Code. Briefly though, there is a Technical Panel appointed who are responsible for Operational Code changes.

In respect of the application forms attached to the Operational Code, modifications are fairly straightforward. If they cannot be agreed by the relevant code parties, then the modification does not take effect.

## How is the Operational Code made binding to market participants?

The Directions mentioned earlier require Scottish Water and retailers to enter into the Operational Code and this is a requirement of the retailers' relevant licences. In addition, there is overlay whereby Scottish Water and relevant retailers are required to enter into what is called an operational code framework agreement which effectively binds the parties further to the Operational Code and gives it contractual force between the parties. Therefore potentially breach of the Operational Code is not only a regulatory issue but a contractual issue between the parties. The operational code framework agreement also sets out an accession agreement which deals with parties joining the market and also there are provisions dealing with parties discontinuing and leaving the market.

## Payment

The Operational Code points directly to the wholesale charges scheme, again much like the wholesale services agreement, in terms of the charges which are to be levied in respect of the services referred to in the Operational Code. Perhaps in a more subtle way than the wholesale services agreement, it again points to the direct link between the services and the charges scheme in terms of payment to be made.

## G. DEVELOPMENTS SINCE MARKET OPENING

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The Operational Code has changed in the following ways since market opening which reflects the practical nature of the document (fulfilling one of the Commission's 2007 principles – “capable of development over time”) and also implementation of policy largely in the area of contestable services, for example:

- as operational practice has developed, comments have been received both from Scottish Water and from retailers regarding issues in respect of the processes as then drafted in 2008. For example, there has been further change to a number of the connection processes which actually reflect the practical position as has developed between retailers and Scottish Water. There is little point in having a procedure which does not reflect the practical consensus reached between Scottish Water and the retailers and which conforms to the principles set out by the Commission for the drafting of the Operational Code;
- contestable services have been developed in the areas of connections, metering and trade effluent. In effect, this means that retailers can opt to carry out these activities to varying degrees depending on the nature of the activity and to be paid for carrying out that activity by Scottish Water under the wholesale services agreement. For example, a retailer can request that Scottish Water undertakes a connections activity or a metering activity at a supply point or it can opt to instruct an accredited entity to undertake those activities; and
- effectively there is a gradual shift taking place regarding certain matters of the Operational Code whereby the regulation of the activity takes place through the process of accreditation rather than directly through words specified in the relevant process in the Operational Code. The consequence of accreditation is not only does a retailer require either to use an accredited entity or sign up to the scheme itself, but also requires the wholesaler, Scottish Water, to do likewise. For example, to sign up to the water industry regulation scheme or WIRS as it is commonly known.

Under the WIRS, Lloyd's Register performs independent technical assessments of companies that elect to be assessed for accreditation for contestable works associated with installation of water infrastructure. Following consultation with its own stakeholders, Scottish Water worked with Lloyd's Register to produce an updated WIRS requirement document. The WIRS requirement document forms the basis of the accreditation arrangements for accredited meter operators and utility connection providers in Scotland. It allows third party companies to build

on the accreditation they may already have regarding the installation of water infrastructure in other jurisdictions, such that they can operate as either as an accredited meter operator or a utility connection provider in Scotland.

In addition to the requirements document, Scottish Water has also produced codes of practice for both metering and connections that will assist and support accredited meter operators and utility connection providers in their operations.

By using the WIRS framework, Scottish Water has ensured that the accreditation of companies to operate as accredited meter operators and utility connection providers will be independently conducted and monitored. It is also ensured that the infrastructure community can use its existing accreditation within Scotland, so keeping the cost to a minimum and avoiding duplication.

In respect of all the developments in contestable services, this has followed the same consultation process in essence as was required prior to market opening where stakeholder groups have facilitated direct engagement between the Commission and market participants including Scottish Water and Scottish Water Business Stream.

Market participants can keep track of changes to the Operational Code via the Central Market Agency's website which publishes a separate section on implemented changes to the Operational Code. Each change is given a unique reference number, details of the originator, a description and an effective date together with links to supporting document.

The next major development for the Operational Code will be to move from physical forms currently at the back end of the Operational Code to Web forms. The forms will become data catalogues rather than an actual form that someone will fill out.



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