

COVID-19 Measures in Support of Non-household customers

May 2020

The ongoing coronavirus (COVID-19) outbreak is presenting unprecedented challenges to businesses and the wider economy in Scotland and across the world. Mindful of its statutory duties to promote the interests of customers, the Commission has been working closely with the Scottish Government, Scottish Water and the wider water industry to identify and develop a comprehensive set of measures to help businesses facing difficulties with water and sewerage charges during this challenging time.

This document sets out details of the Commission's proposals for the launch of two **Charges Relief Schemes** together with proposed changes required for the implementation of the Schemes.

The Commission now invites comments on these proposals, which should be sent by email by 8 May 2020 to competitionteam@watercommission.co.uk.

This consultation has been sent to:

- All Licensed Providers;
- Scottish Water;
- The Central Market Agency Limited;
- The Scottish Government; and
- Citizens Advice Scotland.

This document is also available on the Commission's website: www.watercommission.co.uk

1. Background

On 24 March, the Scottish Government, Scottish Water and the Commission agreed a £60 million package of measures¹ to help licensed providers and their customers, through the temporary suspension of pre-payment of wholesale charges², and the suspension of all Performance Standard Charges under the Market Code.

The Commission is determined to do all that is necessary in order to protect customers. In order to do this, the Commission believes it is necessary to introduce further measures to deliver targeted support to business and other non-household customers, many of which are facing unprecedented financial and other difficulties during this challenging time. These measures are necessarily different to those being introduced in England, due to the material differences in the market framework and the statutory requirement to ensure no detriment to Scottish Water's core functions.

Consequently, and consistent with today's further announcements from the Scottish Government and Scottish Water, the Commission is today setting out the details of two **Charges Relief Schemes**. These schemes are the **Prepayment Refund Scheme** and the **Wholesale Charge Deferral Scheme**.

This document explains these Schemes, the steps the Commission proposes to take in order to implement them, and an indicative timetable for their operation and eventual wind-down.

2. Outline of the Schemes

2.1 Prepayment Refund Scheme

Under this Scheme, licensed providers will be required immediately to repay to their customers any prepayments that they have accepted from customers in respect of those customers' wholesale charges (i.e. the wholesale component of any customers' pre-paid bills with respect to services provided beyond 24 March 2020 and before 24 September 2020).

By way of exception to this requirement, licensed providers will not be obliged to repay such customer prepayments where the licensed provider can evidence that: (a) such customer has received a refund; or (b) such customer has expressly notified the licensed provider that they wish to opt out of this Scheme.

2.2 Wholesale Charge Deferral Scheme

Under this Scheme, licensed providers must apply, if requested by their customer, to Scottish Water for a deferral of volumetric charging for water and sewerage. Additionally, non-household premises with a 25 mm or smaller meter and non-household unmetered premises can also require their licensed provider to apply to Scottish Water for a 60% deferral of their wholesale fixed charges (the standing meter or the unmeasured water and sewerage wholesale charges and the drainage wholesale charges).

Licensed providers may, depending on when their customers apply to participate in the Scheme, need to arrange to provide refunds or credit to their customers in respect of charges which have already been collected.

¹ Details of Scottish Government's announcement on measures in support of non-household customers can be found [here](#)

² Details of Scottish Water's relaxation of the two-month prepayment requirement can be found [here](#).

Licensed providers will be required to pay interest to Scottish Water on the amount of deferred wholesale charges at the rate of 2.5% per annum. This is significantly below both the cost of debt allowed for in the price determination for the period 2015-21 by the Commission and the interest rate previously paid by Scottish Water to licensed providers on the balance of prepayments held.

The Scheme covers both water and sewerage service charges, as well as drainage-only customers, but does not cover trade effluent charges.

All non-household customers are eligible, provided that the criteria set out above are met.

2.3 Further requirements

Licensed providers may levy no fee or penalty (including any requirement to pay interest) on any customers in relation to the implementation, exit from and/or operation of the Schemes.

2.4 The Commission's expectation on retail charges

To reflect the reduced regulatory compliance obligations for licensed providers already announced, the Commission expects licensed providers to reduce their retail margin (by agreement) for the period that their customers benefit from water charge deferral. However, the Commission also recognises that licensed providers will still be fully liable for customers' bad debt charge and for the interest payment on the amount of deferred wholesale charges. As such, the Commission expects that reductions in the retail margin will reflect cost savings to licensed providers from activities, which are temporarily reduced due to customers benefitting from water charge deferral or as a result of the current crisis (such as the reading of meters where not possible, visits to customers' sites etc.).

3. Implementation

To secure the orderly implementation of these Schemes, the Commission is today proposing to issue directions to both Scottish Water and all licensed providers in the market. These directions are included in an Appendix to this notice.

The Commission is now inviting representations from stakeholders on these proposals, which should be received by no later than 8 May 2020 in accordance with the instructions at the start of this document. Subject to any representations received from stakeholders, the Commission intends that these directions shall take effect from 11 May 2020. However, given the urgency of the ongoing COVID-19 situation, the Commission expects licensed providers to act in a way consistent with Ethical Business Principles, do what is right for customers, and take immediate steps to secure the timely implementation of the Schemes.

3.1 Directions in respect of the Schemes

The proposed direction requires licensed providers and Scottish Water to use all reasonable endeavours to facilitate the operation of the Schemes, including placing requirements on licensed providers to:

- (a) publicise and communicate individually to all customers, the availability and benefits of the Schemes;
- (b) process and submit any applications for participation in the Wholesale Charge Deferral Scheme to Scottish Water promptly; and
- (c) share with Scottish Water all information reasonably required by it in relation to the operation of the Schemes.

3.2 Directions to modify Wholesale Services Agreements

Through this direction, the Commission is proposing to modify all Wholesale Services Agreements (WSAs) in place between Scottish Water and licensed providers. The directions require that all WSAs are read as amended by the provisions contained within the directions. The directions set out common provisions such as commencement dates and the term, plus the modifications to WSAs. The directions note the specific amendments to the WSAs for the implementation of each of the Schemes.

3.3 Prepayment Refund Scheme

Part 1 of the Annex to the directions sets out the operational provisions to implement the Prepayment Refund Scheme.

3.4 Wholesale Charge Deferral Scheme

Part 2 of the Annex to the directions sets out the operational provisions to implement the Wholesale Charge Deferral Scheme. In particular, the modifications provide for the definition of relevant eligible customers under this Scheme, set out the requirement to defer customers' wholesale charge in respect of all volumetric charges, and for unmetered customers and those with a 25mm meter size or smaller to implement a 60% deferral of fixed charges. Late payment provisions, payable by the licensed provider in certain circumstances, are also included.

3.5 Timetable

Applications to the Wholesale Charge Deferral Scheme should be submitted to Scottish Water as soon as practicable. Licensed providers should now also take steps to implement the Prepayment Refund Scheme.

The Schemes will be backdated to 24 March 2020 and last for a period of 6 months, until 24 September 2020. The Schemes will be reviewed in the first half of August and, if necessary, would be extended for a further three months until the end of 2020. The Commission proposes to implement these Schemes according to the following timetables, based on either a 6 or 9-month duration.

During this time, Scottish Water shall continue to implement a temporary relaxation of wholesale charge payment terms.

Timetable for Schemes of 6-month duration

23 March 2020	Government's published guidelines on the businesses required to close in response to the COVID-19 pandemic.
1 April 2020	Scottish Water relaxes two-month wholesale prepayment requirements.
4 May 2020	Commission consults on Section 11 Direction to Scottish Water and licensed providers.
11 May 2020	Application process to Deferral Scheme opens.
11 May 2020	Wholesale Services Agreement modification and Direction come into force.
17 June	June wholesale charges become payable by licensed providers.
17 August 2020	Confirmation whether there will be a 3-month extension of the Schemes.
28 August 2020	Scottish Water notifies licensed providers of one-month prepayment of wholesale charges and interest payment on the balance held.
24 September 2020	Schemes end.
October	One-month prepayment of wholesale charges.

15 December 2020	Scottish Water notifies licensed providers that a two-month pre-payment will be required from February 2021.
February 2021	Two-month pre-payment of wholesale charges.
September 2021	All accrued wholesale charges are repaid.

Timetable for Schemes of 9-month duration

15 December 2020	Scottish Water notifies licensed providers that a two-month pre-payment will be required from February 2021.
31 December 2020	Extension ends.
February 2021	Two-month pre-payment of wholesale charges.
December 2021	All accrued wholesale charges are repaid.

Following the end of the Schemes, business customers and licensed providers will gradually repay all the accrued, deferred wholesale charges over a 12-month period.

3. Enforcement

The Commission recognises that these are unprecedented times for all businesses, including licensed providers themselves, and understands the difficulty of providing services during this current crisis.

This is why decisive action has already been taken to help licenced providers continue to deliver essential services to customers. The Commission wishes to thank licensed providers for all of the steps that they have taken so far to protect their customers and employees during this difficult time.

The Commission fully expects the industry to continue to ‘step up to the plate’ and do what is right for customers.

The Commission reminds licensed providers and Scottish Water that they are required, as part of their licence and statutory obligations, to comply with any directions made by the Commission. Consistent with the principles of Ethical Business Practice, the Commission nevertheless expects all licensed providers and Scottish Water to secure that business customers fully benefit from the clear intent and provisions of these Schemes, and take immediate steps to ensure that customers are supported and protected during this difficult and unprecedented time.

The Commission continues to monitor activities in the market, consistent with its statutory duties to promote the interests of customers. The Commission will closely monitor the implementation of these Schemes. The Commission will not hesitate to take enforcement action, should the Commission suspect non-compliance with licence and statutory obligations. The Commission shall regard any licence providers’ non-implementation of the Schemes as a licence breach, which could ultimately lead to licence revocation.

Appendix

The Water Services (Wholesale Charges Relief Schemes) Directions 2020

[DRAFT] DIRECTIONS

ISSUED TO SCOTTISH WATER AND TO ALL WATER SERVICES PROVIDERS
AND SEWERAGE SERVICES PROVIDERS

PURSUANT TO

SECTION 11(2) OF THE WATER SERVICES ETC (SCOTLAND) ACT 2005, THE WATER SERVICES
(CODES AND SERVICES) DIRECTIONS 2007 AND THE STANDARD CONDITIONS DETERMINED
UNDER PARAGRAPH 2(2) OF SCHEDULE 2 OF THAT ACT

BY

THE WATER INDUSTRY COMMISSION FOR SCOTLAND

[11] MAY 2020

1. Legal context for these directions

- 1.1. Section 11(2) of the 2005 Act authorises the Commission to give directions of a specific or general nature to Scottish Water or licensed providers in order to secure the participation of licensed providers in the provision of water and sewerage services in an orderly manner and in a manner that is not detrimental to the exercise of Scottish Water's core functions.
- 1.2. Paragraph 8B of the 2007 Directions authorises the Commission (following such consultation as the Commission may consider appropriate) to issue directions providing that any wholesale

services agreement to which Scottish Water is party shall have effect with, or subject to, such modifications as are specified in those directions.

- 1.3. Standard condition A7(6) of the standard conditions authorises the Commission (following such consultation as the Commission may consider appropriate) to issue directions providing that any wholesale services agreement to which a licensed provider (in whose license that standard condition is in effect) is party shall have effect with or subject to such modifications as are specified in such directions.
- 1.4. These directions are made by the Commission:
 - 1.4.1. as regards paragraph 3, pursuant to the powers conferred on it by s.11(2) of the 2005 Act;
 - 1.4.2. as regards paragraphs 4, 5 and 6 in so far as applicable to Scottish Water, pursuant to the powers conferred on it by paragraph 8B of the 2007 Directions;
 - 1.4.3. as regards paragraphs 4, 5 and 6 in so far as applicable to licensed providers, pursuant to the powers conferred on it by standard condition A7(6) of the standard conditions;
 - 1.4.4. otherwise, in the exercise of each of those powers;having consulted with Scottish Water, all licensed providers and such other parties as the Commission considers appropriate.
- 1.5. In issuing these directions the Commission is not prevented from issuing further directions, of a general or specific nature, to any person specified above on the same subject matter as these directions or on any other matter which the Commission considers appropriate in accordance with its powers.

2. Citation, commencement and interpretation

- 2.1. These directions may be cited as the Water Services (Wholesale Charges Relief Schemes) Directions 2020.
- 2.2. These directions will come into force on the date on which they are made and will remain in force until varied or revoked by the Commission.
- 2.3. Except as otherwise provided in these directions, words and expressions used in these directions shall have the same meaning as defined for the purposes of the standard conditions or, where appropriate, the wholesale services agreements.
- 2.4. References in these directions to written or in writing include communications by email or other digital or electronic form.
- 2.5. In these directions, unless the context otherwise requires:
 - 2.5.1. **“2007 Directions”** means The Water Services (Codes and Services) Directions 2007, made pursuant to s.11(2) of the 2005 Act, as amended from time to time;

- 2.5.2. **“core functions”** means Scottish Water's core functions as defined in section 70(2) of the 2002 Act;
- 2.5.3. **“Deferred Sums”** has the meaning given to that expression in paragraph 1 of part 2 of the annex to these directions;
- 2.5.4. **“PRS Charges”** has the meaning given to that expression in paragraph 1 of part 1 of the annex to these directions
- 2.5.5. **“Schemes”** means the Wholesale Charge Deferral Scheme and the Prepayment Refund Scheme and **“Scheme”** shall be construed as a reference to either of them as the context requires;
- 2.5.6. **“standard conditions”** means the standard conditions determined by the Commission under paragraph 2(2) of schedule 2 to the 2005 Act and as in force from time to time;
- 2.5.7. **“SW Charge Deferral”** means the temporary deferral by Scottish Water of the obligation to pay certain charges falling due under the wholesale services agreements initially announced by Scottish Water on [4] May 2020 (as modified from time to time) and reflected in the WCDS;
- 2.5.8. **“SW Commitments”** means the SW Charge Deferral and the SW Prepayment Suspension;
- 2.5.9. **“SW Prepayment Suspension”** means the temporary suspension by Scottish Water of the requirement to prepay charges under the wholesale services agreements initially announced by Scottish Water on 20 March 2020 (as modified from time to time);
- 2.5.10. **“Term”** means, in relation to each Scheme, the period commencing on 24 March 2020 and ending on such date as shall be notified by the Commission (which may be different in relation to each Scheme);
- 2.5.11. **“WCDS Charges”** has the meaning given to that expression by paragraph 1 of part 2 of the annex to these directions;
- 2.5.12. **“WCDS Customers”** has the meaning given to that expression by paragraph 1 of part 2 of the annex to these directions;
- 2.5.13. **“Wholesale Charge Deferral Scheme”** or **“WCDS”** means the scheme, reflecting the SW Charge Deferral, providing for licensed providers to extend the benefit of the SW Charge Deferral to their customers established pursuant to paragraph 5 below; and
- 2.5.14. **“Prepayment Refund Scheme”** or **“PRS”** means the scheme for licensed providers to extend the benefit of the SW Prepayment Suspension to their customers pursuant to paragraph 4 below.

3. Directions in respect of the Schemes

- 3.1. Scottish Water and licensed providers shall use all reasonable endeavours to facilitate the effective operation of the Schemes.
- 3.2. Without prejudice to paragraph 3.1, licensed providers:
 - 3.2.1. shall take all reasonable steps to publicise the benefits available to customers under the SW Commitments and the Schemes;
 - 3.2.2. shall ensure that customers promptly receive the full enjoyment of the benefits available to them under the SW Commitments and the Schemes;
 - 3.2.3. shall not render or apply any fee, charge or levy (including any requirement to pay interest) to any of their customers in relation to the implementation and/or operation and/or winding down of the Schemes;
 - 3.2.4. shall, to the extent that they continue to hold any amounts during the Term paid by customers in respect of PRS Charges, provide the Commission with satisfactory evidence that such customers (having been made aware of the benefits available under the PRS) do not wish those amounts returned to them;
 - 3.2.5. shall ensure all applications by customers to participate in the WCDS are promptly processed;
 - 3.2.6. shall ensure that any customer payments deferred by them during the operation of the WCDS are subsequently collected according to a timetable consistent with that for the collection by Scottish Water of sums deferred under the WCDS; and
 - 3.2.7. shall promptly provide to Scottish Water all information reasonably required by it in relation to the implementation and/or operation of the Schemes.
- 3.3. Without prejudice to paragraph 3.1, Scottish Water shall, whilst the Schemes (or either of them) remain in effect, consult with the Commission before amending, withdrawing or extending the SW Commitments.
- 3.4. Scottish Water and licensed providers shall promptly provide to the Commission and any person specified by it any information requested by it (or such person) for any purpose connected with the effective operation of the Schemes.

4. Prepayment Refund Scheme

- 4.1. The Prepayment Refund Scheme shall operate as set out in this paragraph 4, or as otherwise directed by the Commission pursuant to paragraph 1.5 of these directions.

Overall aim of the PRS

- 4.2. The Commission hereby notifies Scottish Water and licensed providers that the aim of the PRS is to ensure that licensed providers extend the benefit of the SW Prepayment Suspension to their customers on the basis envisaged in these directions including in part 1 of the annex to these directions.

Directions to modify wholesale services agreements

- 4.3. Each wholesale services agreement shall be deemed to include, and be read as amended by, the provisions contained in part 1 of the annex to these directions in relation to each licensed provider subject always to any reduction in wholesale charges that applies under the Wholesale Charge Deferral Scheme.

Reinstatement of existing terms under wholesale services agreements

- 4.4. Scottish Water shall provide each licensed provider with advance notice in writing that the amendments to the wholesale services agreement set out in part 1 of the annex to these directions shall cease to apply for that licensed provider in respect of its Customers from such date as is specified by the Commission in writing to Scottish Water.

5. Wholesale Charge Deferral Scheme

- 5.1. The Wholesale Charge Deferral Scheme shall operate as set out in this paragraph 5, or as otherwise directed by the Commission pursuant to paragraph 1.5 of these directions.

Overall aim of the WCDS

- 5.2. The Commission hereby notifies Scottish Water and licensed providers that the aim of the WCDS is to ensure that licensed providers extend the benefit of the SW Charge Deferral to their customers on the basis envisaged in these directions including in part 2 of the annex to these directions.

Directions to modify wholesale services agreements

- 5.3. Each wholesale services agreement shall be deemed to include, and be read as amended by, the provisions contained in part 2 of the annex to these directions in relation to each licensed provider:
- 5.3.1. if and to the extent that it has WCDS Customers during the term;
 - 5.3.2. in respect of WCDS Charges only.

Reinstatement of existing terms under wholesale services agreements

- 5.4. Scottish Water shall provide each licensed provider with advance notice in writing that the amendments to the wholesale services agreement set out in part 2 of the annex to these directions shall cease to apply for that licensed provider in respect of its WCDS Customers from such date as is specified by the Commission in writing to Scottish Water.

6. Other directions in respect of wholesale services agreements

- 6.1. Save as otherwise directed by the Commission, every wholesale services agreement shall have effect subject to any further modifications which are consequential on the modifications made under paragraphs 4 and/or 5.

Done at Stirling, [11] May 2020

For and on behalf of the Water Industry Commission for Scotland

..... Alan Sutherland, Chief Executive

ANNEX

Preliminary

References in this Annex to Clauses are to be construed as references to clauses in a wholesale services agreement.

Part 1: Modifications to wholesale services agreements relating to PRS

1. The following new definitions shall be added into Schedule 1 to the wholesale services agreements:

“Term” has the meaning given to that term in the Water Services (Wholesale Charges Relief Schemes) Directions 2020;

“Wholesale Charge Deferral Scheme” has the meaning given to that expression in the Water Services (Wholesale Charges Relief Schemes) Directions 2020;

“PRS Charges” means all sums prepaid by a Customer to the Licensee in respect of any date during the Term;

2. The following provisions shall be added as a new Clause 8.11 at the end of Clause 8.10 of the wholesale services agreements.

“8.11 Clause 3, Clause 8A and Clause 8 of this Agreement shall be read as amended by the following provisions during the Term and subject always to any reduction in Charges that applies under the Wholesale Charge Deferral Scheme:

- (i) the suspensive condition in Clause 3.4 shall not apply;*
- (ii) SW shall invoice the Licensee for the Provisional Monthly Charge for each Month not later than the fourteenth Business Day of that Month, to take effect in respect of June 2020 and every Month thereafter during the Term;*
- (iii) the Licensee shall pay SW such Provisional Monthly Charge by the tenth Business Day prior to the start of the following Month;*
- (iv) interest will accrue under Clause 8.8.2 on Provisional Monthly Charges due and paid under Clauses 8.11 (ii) and (iii) above in respect of the period from the date in Month X when the sums are paid until the end of Month X;*
- (v) interest will also accrue under Clause 8.8.2 on the Provisional Monthly Charges prepaid under Clause 8.2 for the Months of March, April and May 2020; and*
- (vi) late payment interest will not accrue under Clause 8.8.1 on a Provisional Monthly Charge invoiced in accordance with Clause 8.11 (ii) above.*

Part 2: Modifications to wholesale services agreements relating to WCDS

1. The following new definitions shall be added into Schedule 1 to the wholesale services agreements:

“Deferred Sums” means the amount of WCDS Charges that are deferred under Clause 7.5;

“Small WCDS Customers” means any WCDS Customer whose Eligible Premises are (i) metered with a 25mm or smaller meter size or (ii) unmetered;

“Specified Rate” means interest on the amount of the Deferred Sums in respect of each day falling after the day to which the relevant amount of the Deferred Sums applies until payment of such amount in full at the rate of 2.5% nominal per annum, such interest to be calculated on a daily basis and compounded annually;

“Term” has the meaning given to that term in the Water Services (Wholesale Charges Relief Schemes) Directions 2020;

“Undertaking” means a written undertaking (in such form as Scottish Water shall (with the approval of the Commission) specify) from the Licensee to any Customer committing to provide the Customer with benefits through the Licensee’s participation in the Wholesale Charge Deferral Scheme in relation to such day or days falling during the Term as have been applied for by the Customer;

“WCDS Charges” means all Charges other than Charges for Trade Effluent Services;

“WCDS Customers” means all Customers of the Licensee wishing to receive benefits through the Licensee’s participation in the Wholesale Charge Deferral Scheme and who are in receipt of an Undertaking;

“Wholesale Charge Deferral Scheme” has the meaning given to that expression in the Water Services (Wholesale Charges Relief Schemes) Directions 2020;”

2. The following provisions shall be added as a new Clause 7.5 at the end of Clause 7.4 of the wholesales services agreements.

“7.5 To the extent that the Licensee has WCDS Customers during the Term and in respect of WCDS Charges only, the obligation to pay the amount of the Charges falling due and payable by the Licensee under this Agreement shall (in exchange for such security as Scottish Water may (with the approval of the Commission) require) be deferred during the Term as follows:

- (i) for all WCDS Customers, all WCDS Charges levied on a volumetric basis;*
- (ii) for Small WCDS Customers only, 60% of all other WCDS Charges;*
- (iii) late payment interest will not accrue under Clause 8.8.1 of this Agreement on any Deferred Sums until the Deferred Sums become due and payable in accordance with Clause 7.6;*
- (iv) the deferral shall apply to each day during the Term applied for by the Customer whether falling before, on or after the date of the Undertaking; and*
- (iv) it shall not be a Licensee Default for the Licensee to fail to pay any Deferred Sums during the period of such deferral;*

declaring that, notwithstanding the deferral of the obligation to pay such Charges, such Charges remain due.”

3. The following provisions shall be added as a new Clause 7.6 at the end of the new Clause 7.5 of the wholesale services agreements.

“7.6 The Deferred Sums shall become payable by the Licensee to SW for each WCDS Customer together with interest at the Specified Rate:

- (i) in the case of all WCDS Charges, in accordance with a payment schedule specified by SW following consultation with the Licensee and approved by the Commission; and*
- (ii) in the case of volumetric charges for each WCDS Customer, no earlier than the first date on which a meter read has been taken at the WCDS Customer’s Eligible Premises and submitted to the Central Market Agency in accordance with the Market Code.”*

4. The following provisions shall be added as a new Clause 7.7 at the end of the new Clause 7.6 of the wholesale services agreements:

“7.7 Where any Deferred Sums are not paid in accordance with Clause 7.6 and to avoid doubt:

- (i) late payment interest will accrue under Clause 8.8.1 of this Agreement at the rate of 5% per annum rather than 4% per annum; and*
- (ii) failure to pay such amount by the date specified under the payment schedule shall be capable of constituting a Licensee Default.”*