

COVID-19 Response and Decision on Measures in Support of Non-household Customers and to protect 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 while protecting household customers.

The Commission has consulted on the introduction of two **Charges Relief Schemes** together with proposed changes required for the implementation of the Schemes. This document sets out the Commission's final decision and details of the two Schemes.

This consultation response and decision document 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 2020, 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, thereafter, through letters to licensed providers on 24 March and 9 April³, requested licensed providers to provide information on the measures taken to support customers affected by the crisis. Having carefully reviewed the information provided, the Commission was disappointed to note that licensed providers appeared to have provided only limited support to end customers and markedly less than the value of the temporary suspension of pre-payment of wholesale charges. Support appeared limited, relatively ad hoc, and applied on a case by case.

The Commission is committed to doing all that is necessary in order to protect both non-household and household customers as far as possible without compromising the interests of future customers or levels of service. The Commission is determined that household customers should not be adversely impacted by any measures that the Commission takes in support of non-household customers.

The Commission now believes it is necessary to take decisive action and introduce specific measures to deliver targeted support to business and other non-household customers affected by this crisis, many of which are facing unprecedented financial and other difficulties during this challenging time.

The Commission has, therefore, consulted on the introduction of two Schemes that ensure that all affected non-household customers can be appropriately supported throughout this pandemic. These Schemes are the **Prepayment Refund Scheme** and the **Wholesale Charge Deferral Scheme**. These measures are necessarily different to those being introduced in England, due to the material differences in the market framework and the statutory requirement on the Commission to ensure no detriment to Scottish Water's core functions.

The Commission has now carefully reviewed all responses received from stakeholders during the consultation on the two **Charges Relief Schemes** and has made some changes.

This document summarises the representations from stakeholders and sets out the Commission's response, the text of the near-final Section 11 Directions for the two Schemes that the Commission plans to issue, and a timetable for their operation and eventual wind-down.

In addition to the above implementation documents, Scottish Water is now developing a guidance document setting out the operation of the **Wholesale Charge Deferral Scheme**. Scottish Water will be engaging with stakeholders on the contents of the guidance in the coming days with a view to the application process opening on 14 May 2020.

2. Principles of the Charges Relief Schemes

2.1 Principles underpinning the Schemes

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](#).

³ Copies of the letters sent to licensed providers can be found [here](#) and [here](#).

It is important to set out the key principles that underpin these two **Charge Relief Schemes** and the wider support measures already announced⁴, in line with the Commission's primary duties to promote the interests of customers and to ensure there is no detriment to the core business of Scottish Water:

- Businesses and other organisations impacted by the current crisis must benefit fully from the Scheme;
- Businesses and other organisations that have pre-paid their water charges should, as far as possible, be protected if a licensed provider were to fail;
- The arrangements should be sufficiently flexible that they can be adjusted or extended if required;
- There should be no cost or detriment to household customers as a result of the support that is being provided to businesses and other organisations; and
- The arrangements should be capable of being unwound in a manner that does not increase the burden on businesses and organisations when they start to recover from the crisis.

These principles are consistent with the Commission's primary duties and with Scottish Ministers' [Principles of Charging](#) for the water industry.

The Commission recognises that some licensed providers may have already implemented measures in support of their customers that go 'above and beyond' the measures set out in these two Schemes and that, as a consequence, they may not want to opt to in to the **Wholesale Charges Deferral Scheme** for those customers. It is important, however, that all non-household customers are offered a choice and are not worse off relative to the benefits that they could receive under these Schemes.

2.2 The retail market in Scotland

In developing the two **Charges Relief Schemes**, the Commission has been mindful of its primary duties and has taken into account the distinctive nature of the Scottish framework. Before discussing the details of the schemes, the Commission believes it is important to remind stakeholders of some of the key principles underpinning the retail non-household market in Scotland.

Ethical Business Regulation (EBR)

In line with the principles of Ethical Business Practice (EBP), the Commission expects licensed providers to take responsibility for high standards of conduct and pro-actively support their customers, especially during this pandemic. It will be critical for customer confidence that there is clear and demonstrable evidence that licenced providers have supported them through this unprecedented crisis. EBP places the onus on licensed providers to demonstrate trust and demonstrate pro-actively why such trust is justified. To this end, in its [letter](#) to licensed providers in March 2020, the Commission set out clear expectations that all licensed providers would pass on all of these cash flow benefits to their customers to maintain the trust and confidence of customers in the market.

EBR, however, is not 'light touch' regulation and in the absence of behaviours consistent with EBP, it requires regulators to intervene in a timely manner. As explained in its latest update on its wider market review of the retail framework, the Commissions will consult on a new licence condition that will require licensed providers to act in a fair and open manner with its customers and the Commission in undertaking their licensing functions in due course.

⁴ As previously communicated directly by the Scottish Government to licensed providers in letter dated 19 March 2020.

The legal framework

The 2005 Act⁵ requires the Commission to, so far as is consistent with its general function of promoting the interests of customers, exercise its licensing functions for the purpose of securing the participation of licensed providers in a manner that is not detrimental to the exercise of Scottish Water's core functions. Therefore, the Schemes have been designed to ensure that risks to Scottish Water, and ultimately to households are minimised as far as possible.

The no detriment provision is absent from the UK legislative framework.

Policy framework

Scottish Ministers set out the Principles of Charging that underpin the charging arrangements for water and wastewater services provided by Scottish Water. The Commission notes that the retail market licensing framework is, and should continue to be, consistent with such principles.

Principles of Charging require, for example, that vacant sites are charged for the availability of water and sewerage service and for drainage services. The UK Department for Environment Food and Rural Affairs (DEFRA) does not mandate charging vacant sites in England.

Margins available in the Scottish market

In Scotland, any licensed provider that seeks to operate in the Scottish market that is appropriately capitalised can earn a retail gross margin including a fair return on a portfolio of customers. The default tariffs were set by the Commission after a detailed scrutiny of the costs to serve different classes of customers, including working capital, the incidence of bad debt and the capital structure of a standalone retail business. If a licensed provider can be more efficient then it is open for the licensed provider to reflect this in the prices that it offers to its customers and earn the same return.

Licensed providers are, therefore, remunerated for costs incurred in managing bad debt and for this reason they are fully responsible for their customers' non-payment. It would not be appropriate to expect domestic customers to meet these costs. Scottish Water receives no allowance for bad debt originating from non-household customers or for late payment by licensed providers.

3. Representations received and the Commission's response

The Commission received 14 responses to its consultation. The Commission would like to thank all stakeholders for providing their representations.

The table below summarises the key points raised by stakeholders and the Commission's response.

⁵ The Water Services etc. (Scotland) Act 2005.

Nature of comment	Representation	The Commission's response
Engagement	Some stakeholders commented that limited engagement and tight timescales do not allow the Commission to reflect properly on comments.	<ul style="list-style-type: none"> - The Commission has consulted and has sought to implement the two Scheme as quickly as possible in order to offer licensed providers the maximum amount of time to process applications for the Wholesale Charge Deferral Scheme in time for the next settlement run. - The unprecedented nature of the COVID-19 crisis necessarily requires swift action. The Commission has mobilised appropriate resources in order to implement these Schemes swiftly and consider/analyse feedback from stakeholders. - Licensed providers have been fully aware of the Commission's expectations as to the implementation of support measures for customers since March 2020. It appears that licensed providers have not passed the full benefits that accrued to them from the relaxation of pre-payment of wholesale charges to their customers. - Accordingly, the Commission believes that the process of engagement has been appropriate given both the context of the current crisis and the previous response of many licensed providers. - The Commission has, however, made a number of adjustments on the implementation timetable. Further information can be found at Section 5.5 below.
	Some stakeholders suggested that the Commission's engagement and proposals are inconsistent with the principles of Ethical Business Regulation.	<ul style="list-style-type: none"> - The Commission strongly rejects the notion that its actions have been inconsistent with the principles of Ethical Business Regulation (EBR). In line with this approach, and based on prior engagement in March and April 2020, licensed providers were strongly encouraged to act in a way that was consistent with Ethical Business Principles (EBP). - Based on the evidence seen by the Commission to date, the Commission is not persuaded that licensed providers have taken consistent and sufficiently pro-active measures to support all customers affected by the crisis and that they have not demonstrated behaviours consistent

Nature of comment	Representation	The Commission's response
		with EBP. In response to this, the Commission is now seeking to take more prescriptive steps to secure that customers fully benefit from the support measures which have been deployed. This approach, and the sequencing of it, is fully consistent with EBR.
	Some stakeholders felt that the Commission has not fully explained its reasoning for introducing the Schemes.	<ul style="list-style-type: none"> - As outlined in the Commission's consultation, the Schemes are designed to secure that customers are supported and benefit from the measures being introduced. Further, as more fully explained at section 1 of this decision document, the Commission believes that more prescriptive measures to secure customer benefit are necessary, based on the Commission's review of the evidence of activities in the market over the past 2 months.
	Some stakeholders suggested that there has been a lack of engagement as to the specific implementation steps for the Schemes.	<ul style="list-style-type: none"> - The Commission recognises that there are further practical and process steps which require to be implemented, in addition to the directions being consulted on. With this in mind, Scottish Water has been working closely with the Commission to develop the underlying processes for the operation of the Deferral Schemes. It is anticipated that further information shall be available in Scottish Water's guidance document. - The Commission has clarified the extent of the Prepayment Refund Scheme in the near final Section 11 Directions, annexed.
	Some stakeholders suggested that the Schemes need to be flexible enough to allow for refinement and review as appropriate.	<ul style="list-style-type: none"> - The Commission agrees that it is appropriate for the Schemes to be flexible enough to be refined and reviewed in collaboration with stakeholders and, consequently, has built a number of checks and balances into the proposed directions. The proposed timetable specifically includes a review point in August 2020 with the opportunity to extend the Schemes if required/appropriate. The Commission will fully engage with the industry throughout this process.

Nature of comment	Representation	The Commission's response
Eligibility for wholesale deferral	<p>Some stakeholders felt that given the tight timescales and difficulty to communicate with closed business it is not practical to comply with the directions by 11 May 2020. Some stakeholders also cited the difficulties they may have in engaging with customers, particularly those who are not trading. Stakeholders therefore suggested that some customers could be automatically enrolled into the Deferral Scheme if, for example, those customers are on the list of businesses that the UK Government required to close or if the customers have already contacted their licensed providers to explain that their premises are closed.</p>	<ul style="list-style-type: none"> - As noted above, the intention is not that all customers are contacted by 11 May 2020. The benefits of the Deferral Scheme are available from 24 March 2020 notwithstanding the date of the customer's application. Customers will be able to apply for the Deferral Scheme, and licensed providers should take steps to ensure that they are ready to process applications. It is anticipated that further guidance as to the application process will be found in the relevant section of Scottish Water's guidance document. - The Commission recognises that some customers will be difficult to engage with at this time. The Commission agrees with stakeholders that it would be beneficial to introduce an element of automatic enrolment for customers, which would allow licensed providers to apply for deferral on behalf of a customer where this would not be to the detriment of that customer. The Commission has made a number of revisions to the directions to reflect this change. Scottish Water's guidance document will also explain the process in more detail. Licensed providers will continue to be responsible for undertaking all the required licensed activities with respect to those customers, including the management of bad debt risk and the collection of payments.
	<p>Some stakeholders commented that a blanket approach is not targeted to businesses in need. A waiver of charges would provide the appropriate support to businesses that have been instructed to close due to the Scottish Government lock-down guidance.</p>	<ul style="list-style-type: none"> - The Commission considered a number of options regarding the implementation of the Schemes. A blanket approach is administratively simpler to implement, as opposed to a means tested approach, which requires judgment to be exercised by the decision maker. The Commission's initial proposals were focused on making the Schemes administratively practical. The Commission has, however, engaged further with Scottish Water on this point. Scottish Water has confirmed that some level of targeting will be applied to ensure that those who require support from the Scheme are the ones who benefit from it.

Nature of comment	Representation	The Commission's response
		<ul style="list-style-type: none"> - Applications will be assessed by Scottish Water, who will exercise reasonable judgement as to the eligibility of the customer, based on the guidance on business closures issued by the Scottish Government. For example, businesses which have not been forced to close, and may be trading successfully would not be eligible. - It is anticipated that further information on this aspect will be available in Scottish Water's guidance.
Deferral policy	Some stakeholders felt that the proposals would be costly to implement and complex to manage.	<ul style="list-style-type: none"> - The Commission recognises that implementing the Schemes will require effort on the part of licensed providers, and that there will necessarily be questions around the specific implementation steps. The Commission notes that many licensed providers are already preparing for the specific implementation of the Schemes. - The Commission also recognises that there are outstanding questions as to the specific implementation of the Schemes. It is anticipated that many aspects of implementation will be addressed in Scottish Water's guidance document.
	Some stakeholders commented that deferring instead of waiving charges will increase the risk that those charges will never be recovered from some businesses and increase the future debt burden.	<ul style="list-style-type: none"> - The Commission's approach is designed to ensure that risks to household customers are minimised as far as possible. As such, a holiday of payments would cause Scottish Water to incur losses and, as consequence, any shortfall of revenue would have to be recovered from household and non-household customers who continue to pay. Licensed providers are remunerated for costs incurred in managing bad debt and should, therefore, remain fully responsible for their customers' non-payment. It is not appropriate to expect domestic or other non-household customers to meet this cost. - The Commission's understanding is that a deferral of charges for customers will necessarily assist the customer in the management of their cash flow. As a result, the Commission anticipates that the deferral policy would far more likely have a positive impact on the mitigation of bad debt risk. The Commission cannot see how providing customers with a deferral and an extended longer period of time for repayment can increase the risk of bad debt – assuming licensed providers engage in normal and prudent credit management of their customers.

Nature of comment	Representation	The Commission's response
		<ul style="list-style-type: none"> - The proposals allow customers to repay deferred charges gradually over an extended 12-months period after the end of the Scheme in order to avoid any sudden increase in the debt burden at the end of the deferred period.
	<p>Some stakeholders commented on the increased insolvency risk during this time, and that some proportion of bad debt should be shared more equitably with the wholesaler.</p>	<ul style="list-style-type: none"> - A fundamental principle of the Schemes is that they are designed primarily to benefit customers. Further, the Commission notes that the market in Scotland has been designed to ensure an appropriate allowance for bad debt is allowed for in the permitted retail margins of licensed providers. The Commission sees no reason why an appropriately operated and capitalised licensed provider, which has exercised prudent credit control processes and has appropriately factored risks in its price levels, should be allowed to transfer these bad debt costs to other customers.
	<p>One stakeholder queried how meter readings will affect volumetric deferrals – in that meter readings are currently not taking place.</p>	<ul style="list-style-type: none"> - Scottish Water's guidance document will clarify this point – licensed providers should continue to obtain and submit meter readings where it is safe and practical to do so and that volumetric deferrals will apply only until two meter readings taken after 24 March 2020 are available confirming actual consumption during COVID restrictions. At that time there will be a reconciliation.
	<p>One respondent argued that the Commission should consider adopting a deferral policy based on the default tariff (or the actual tariff used to bill the customer) rather than on the wholesale charges.</p>	<ul style="list-style-type: none"> - The Commission recognises that licensed providers may price their services with reference to either the wholesale charges or the default tariffs. It is a matter for licensed providers to adjust the tariffs or the final charges accordingly to ensure that the benefits resulting from the adjustment to the wholesale charges during the deferral period are passed on to customers.
	<p>Some stakeholders challenged that Scottish Water can charge interest in relation to the</p>	<ul style="list-style-type: none"> - As stated before, a key principle of the Schemes is to ensure that customers have the opportunity to benefit from the Schemes. The Commission does not believe that it is appropriate for customers to be burdened any additional costs at this time. The Commission considers that,

Nature of comment	Representation	The Commission's response
	deferred wholesale charges, whilst licensed providers are disallowed to recoup that cost from customers. Licensed providers are, therefore, being required to bear the full costs of the scheme.	<p>given its duty to do no detriment to the core business of Scottish Water, its allocation of risk is appropriate.</p> <ul style="list-style-type: none"> - The Commission notes that in England, Ofwat's decision in relation to wholesale deferrals allows wholesalers to charge (up to) 5.98% interest. The Commission's proposal, in respect of Scottish Water, is more modest at a rate of 2.5%. Such a rate simply covers the marginal costs of financing this scheme.
	Some stakeholders note that requirements to refund pre-payment would increase the risk of licensed providers' default.	<ul style="list-style-type: none"> - Currently the risk associated with making pre-payments lies with the customers (i.e. they are likely to lose pre-paid monies in the event of a licensed provider's insolvency). Customers should be made aware of this risk and offered a choice to be reimbursed and opt for payment in arrears. In line with the above, the Commission believes that on balance the proposals reflect the appropriate allocation of risk, keeping in mind the Commission's duties to promote the interests of customers and to secure that there is no detriment to the core functions of Scottish Water.
	Some stakeholders are concerned that the requirements of the Prepayment Scheme could negatively affect the liquidity of some licensed providers. Requirements to refund pre-payment would increase the risk of licensed providers' default.	<ul style="list-style-type: none"> - The Commission notes that licensed providers have enjoyed, through the implementation of the initial scheme announced by the Scottish Government in March 2020, assistance on their liquidity for the months of April and May. Licensed providers will also continue to benefit from the relaxation of wholesale prepayments until the end of the Scheme. The Commission believes that all appropriately and prudently managed licensed providers should be able to manage the implementation of the Schemes and deliver the intended benefits to their customers.

Nature of comment	Representation	The Commission's response
	Some stakeholders voiced concern around the repayment of deferred wholesale charges following the wind down of the Scheme.	<ul style="list-style-type: none"> - The consultation was clear that the wind down of the Schemes shall be down in a gradual way. The Commission intends that licensed providers would pay back charges gradually within a twelve-month period. It is anticipated that further information will be available in Scottish Water's guidance document.
Prepayment scheme	Some retailers wished to clarify the requirements for backdating prepayments for customers under the Prepayment Scheme.	<ul style="list-style-type: none"> - The requirement to refund customers is forward looking. As a result, the requirement to refund prepayments to customers will only apply to the extent these have not already fallen due for services provided. This has been clarified and reflected in the drafting of the proposed directions and will be further clarified in Scottish Water's guidance.
	Some stakeholders were concerned around the timescales for implementing the Schemes, and state that it would be impossible for licensed providers to comply with the requirements of the Schemes by 11 May 2020.	<ul style="list-style-type: none"> - The Commission recognises that swift action is required in order to implement the Schemes. However, the Commission would like to clarify that it does not expect all licensed providers to have written to each customer by 11 May 2020 outlining the availability of the Wholesale Charge Deferral Scheme. It expects, however, the Scheme to be open to applications from 12 May 2020.
	Some stakeholders commented that there is limited information on the exact processes to be followed to implement the Schemes.	<ul style="list-style-type: none"> - Scottish Water is developing further guidance on the implementation of the Deferral Scheme.
Implementation	Some stakeholders requested clarity around the transfer blocking for outstanding debt of more 90 days and whether this would apply to all deferred charge or not. They asked	<ul style="list-style-type: none"> - Customers are able to switch during the time when the scheme is in place. The intention is for the new licensed provider will become responsible for the payment of the charges that have been deferred for the switching customer. The old licensed provider will be able to block a transfer where there is outstanding debt, not including the deferred charges. The Commission recognises that customers may find it more difficult to find a new licensed provider during the

Nature of comment	Representation	The Commission's response
	clarification on whether, in the event of a transfer, the deferred charges would also transfer to a new licensed provider.	period in which they are participating in the Schemes. The Commission will consider whether further guidance on this matter is required.
	A stakeholder requested clarification on whether the landlord becomes liable for charges where the occupier of the premises does not return to the premises at the end of the crisis.	- When a premises becomes vacant as defined in the Market Code, the landlord becomes liable for retail charges from the date of vacancy.
	Some stakeholders queried whether customers would be allowed to exit the WCDS scheme once they start trading again.	- The Commission understands Scottish Water's guidance will allow flexibility for customers in this context. Customers may withdraw from the Scheme at any time while it is operational.
	One stakeholder asked who would be liable for the deferrals in situations where there is a change in the responsible party for the supply (eg a registration transfer or POLR or a change of owner / occupier).	<ul style="list-style-type: none"> - As regards customer transfers in these registration transfer or POLR situations, the Commission anticipates that normal processes should apply, subject to comments made above. - Scottish Water is entitled to take an assignation of deferred customer charges to mitigate the impact of the bad debt exposure. This step is consistent with the Commission's duty to do no detriment to the core business of Scottish Water.
	Some stakeholders were concerned that the implementation of the Schemes would contradict bilateral	- The design of the Deferral Scheme is to allow customers <i>voluntarily</i> to apply for the benefits of it. Should a customer already enjoy the benefits of an existing agreement, which is more beneficial than the proposed Scheme, then the Commission would not expect the customer to apply for the scheme. It would also expect licensed providers to continue to honour their

Nature of comment	Representation	The Commission's response
	measures which some licensed providers have already agreed with their customers.	agreement with the customer and not to seek to enter such customers into the Scheme. Equally, the Prepayment Scheme includes an ability for customers to opt-out should they wish to. Such a circumstance may be where there is already a beneficial agreement in place which the customer wishes to continue with. The Schemes as proposed do not prevent licensed providers doing more for their customers.
Cross border issues	Some stakeholders contrasted the Commission's approach to that of the English market, in particular that there has been a 'genuine removal' of charges.	- The Commission's understanding is that the measures adopted in England do not amount to a cancellation or 'genuine removal' of charges. The Commission understands that the approach in that market is to adopt a deferral on payments which will be required to be repaid by March 2021.
	Some stakeholders commented that customers may be confused by the different approaches being taken in Scotland against the measures being taken in England.	- The retail market in Scotland was established in 2008. For some time, there have been distinct approaches taken in both jurisdictions on a variety of issues, not just related to the current crisis. The Commission fully expects licensed providers to communicate clearly with their customers, highlighting the measures which are specifically being implemented in Scotland. With appropriate communication, there should be no confusion on the part of customers as to the options which are available to them in the Scottish market.
	Some stakeholders commented that a lack of alignment with measures in England will make it difficult for multi-site customers. There were some views that it would be difficult for licensed providers to disaggregate old bills and provide refunds where these have been consolidated across jurisdictions.	- The Commission notes that licensed providers working with customers with sites in both jurisdictions have, for some time, been required to operate in distinct regulatory environments which reflect the statutory requirements within each market, which are different. Licensed providers have chosen to operate in two different markets. It is for them to manage the implications of their choices. The Commission expects Licensed Providers to communicate clearly and manage their customer relationships appropriately.

After having carefully reviewed the responses provided by stakeholders the Commission has made some revisions to the two Schemes and the directions. The Commission has also taken the opportunity to make a number of additional, technical changes to secure the appropriate functionality of the Schemes. The following paragraph sets out the two Schemes in detail.

4. Outline of the Schemes

4.1 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 to the extent these have not already fallen due for services provided.

By way of exception to this requirement, licensed providers will not be obliged to repay such customer prepayments where the licensed provider can evidence (save to the extent not reasonably practicable) that a customer does not wish to participate in the Scheme. The Commission does not intend this to require the replacement of any (more beneficial) bilateral agreements already in place between a licensed provider and their customer. Customers may choose to retain the benefits of an existing agreement – and it is entirely open to customers to make that choice.

4.2 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 unmeasured premises and those premises with surface water drainage only 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 they have already collected.

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 modest interest rate ensures that both household and non-household customers who do not opt for a deferral are not adversely impacted by these measures.

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

All non-household customers are eligible, provided that the criteria set out above are met and subject to assessment by Scottish Water, who will exercise reasonable judgement as to the eligibility of the customer, based on the guidance on business closures issued by the Scottish Government. For example, businesses which have not been forced to close, and may be trading successfully are not expected to apply.

To recognise the situation where customers may not be easily contactable, the directions now make it clear that licensed providers may submit an application on behalf of a customer to receive benefits under the Scheme where this would not cause detriment to the customer.

4.3 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.

4.4 The Commission's expectation on retail charges

To reflect the reduced regulatory compliance obligations for licensed providers already announced, the Commission expects (but is not requiring) 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.).

5. Implementation

To secure the orderly implementation of these Schemes, the Commission intends to issue directions to both Scottish Water and all licensed providers in the market. The Commission has reviewed its draft directions as published in its consultation, and made a number of adjustments. The near final directions are included in an Appendix to this notice. Key changes are highlighted from the previous version that the Commission consulted on.

The Commission intends to publish the final directions on 13 May 2020 (along with details of any substantive changes made to the near final version) and for these to come into force on 14 May 2020, rather than the originally proposed 11 May 2020.

Further, to allow industry engagement on the development of Scottish Water's guidance document, the Commission has also agreed with Scottish Water to postpone the opening of applications to the Deferral Scheme until 14 May 2020. The Commission expects licensed providers to act in a way consistent with Ethical Business Practice, do what is right for customers, and take immediate steps to secure the timely implementation of the Schemes.

As regards the specific point of customer switching during the life of the Schemes, the Commission wishes to ensure that customers are capable of switching but recognises there are a number of practical implementation issues to work through. Further work will be undertaken with stakeholders in order to address these issues.

5.1 Directions in respect of the Schemes

The directions require 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.

5.2 Directions to modify Wholesale Services Agreements

Through these directions, the Commission is modifying 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.

5.3 Prepayment Refund Scheme

Sections 3, 4 and Part 1 of the Annex to the directions sets out the operational provisions to implement the Prepayment Refund Scheme.

5.4 Wholesale Charge Deferral Scheme

Sections 3, 5 and 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 unmeasured 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.

5.5 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 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 the steps outlined in the relevant section of its website on its response to the Coronavirus situation.

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 Directions to Scottish Water and licensed providers.
11 May 2020	Commission issues decision document.
13 May 2020	Final version of directions published.
14 May 2020	Wholesale Services Agreement modification and Directions come into force.
14 May 2020	Application process to Deferral Scheme opens.
17 May 2020	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.

Only after the Schemes end, business customers and licensed providers will gradually repay all the accrued, deferred wholesale charges within a 12-month period. It is anticipated that further details on this point will be included in Scottish Water’s implementation guidance.

6. 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 expects the industry to take a proactive approach to supporting customers through these difficult times and do what is right for customers.

The Commission notes that licensed providers and Scottish Water 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 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’ failure to implement the Schemes as a licence breach, which could ultimately lead to licence revocation.

7. Next steps

The Commission expects Scottish Water to publish its Wholesale Charges Deferral Scheme Guidance Document to licensed providers and to be ready to assist licensed providers with their applications.

The Commission will issue the changes to the Market Code that ensure that all premises that are part of the Wholesale Charge Deferral Scheme can be identified at the central system.

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]~~13 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~~ [14 May 2020](#) 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. **“market code”** means the code designated by the Commission as the market code in force from time to time;
- 2.5.5. **“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 paragraphs 3 and 4 below;
- 2.5.6. **“PRS Charges”** has the meaning given to that expression in paragraph 1 of part 1 of the annex to these directions;
- 2.5.7. ~~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;
- 2.5.8. ~~2.5.6.~~ **“SPID”** has the meaning given to that expression in the market code;
- 2.5.9. **“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;
- 2.5.10. ~~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~~ the Commission on ~~{4}~~ May 2020 (as modified from time to time) and reflected in the WCDS;
- 2.5.11. ~~2.5.8.~~ **“SW Commitments”** means the SW Charge Deferral and the SW Prepayment Suspension;
- 2.5.12. ~~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);
- 2.5.13. ~~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);
- 2.5.14. ~~2.5.11.~~ **“WCDS Charges”** has the meaning given to that expression ~~by~~ in paragraph 1 of part 2 of the annex to these directions;
- 2.5.15. ~~2.5.12.~~ **“WCDS Customers”** has the meaning given to that expression ~~by~~ in paragraph 1 of part 2 of the annex to these directions; and
- 2.5.16. ~~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 paragraphs 3 and 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:
- 3.1.1. to facilitate the effective operation of the Schemes; and
 - 3.1.2. to ensure that customers’ ability to change their licensed provider is not impeded by virtue of them receiving benefits under either 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 or on any of their customers in relation to the implementation and/or operation and/or winding down of and/or withdrawal from 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, refund them to the relevant customers or (save to the extent not reasonably practicable) 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~~ receive benefits under the WCDS are promptly processed by them;
 - 3.2.6. may participate in the WCDS in respect of customers who have not applied to them to receive benefits under the WCDS where this would not cause detriment to such customers;
 - 3.2.7. ~~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;

3.2.8. shall, in relation to any withdrawal from the WCDS in respect of a customer, promptly submit the required data item under the market code to revert the vacant status of the customer's SPID to "false" (unless such SPID has, in fact, fallen vacant); and

3.2.9. ~~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 [paragraph 3 above and](#) 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 [paragraph 3 above](#) [and](#) 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, ~~14~~¹³ 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 prior to the end 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~~ end of ~~the following that~~ 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;

“Deemed Charge” means such amount as Scottish Water shall deem to be appropriate to be invoiced to the Licensee under Clause 7.5 of this Agreement in respect of the Deferred Sums for all WCDS Customers of the Licensee;

“Small ~~and SWD-Only~~ WCDS Customers” means ~~any all~~ WCDS ~~Customer~~ Customers whose Eligible Premises are (i) metered with a 25mm or smaller chargeable meter size ~~or (ii) unmetered and no chargeable meter size above 25mm on the premises or (ii) unmeasured or (iii) receiving Surface Water Drainage Services only;~~

“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 (or by the Licensee on its behalf);

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

“WCDS Customers” means all Customers of the Licensee wishing (or who, in the Licensee’s opinion, would wish) to receive benefits through the Licensee’s participation in the Wholesale Charge Deferral Scheme ~~and who are in receipt of an Undertaking;~~ to whom Undertakings have been provided and for so long as such Customers are the subject of WCDS Approvals;

“WCDS Approval” means, in respect of any Customer of the Licensee, such determination as Scottish Water may, pursuant to an application made by the Licensee, make approving such Customer’s entitlement to receive benefits through the Licensee’s participation in the Wholesale Charge Deferral Scheme;

“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~~ payment of the amount of the Charges ~~falling due and payable by the Licensee~~ under this Agreement shall (in exchange for such assignment of rights and/or 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 and SWD-Only 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; and
- (vi) notwithstanding the deferral of payment of the Deferred Sums, SW shall in respect of all WCDS Customers, invoice the Licensee for the Deemed Charge for every Month during the Term not later than the fourteenth Business Day prior to the end of that Month;

declaring that, notwithstanding the deferral of the ~~obligation to pay~~ payment of such ~~Charges, such Charges remain due.~~ Deferred Sums, such Deferred Sums shall become due (up to the extent of the Deemed Charge) on the date of the relevant invoice and shall be payable in accordance with Clause 7.6.”

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 no earlier than the date specified by the Commission under paragraph 4.4 of the Water Services (Wholesale Charges Relief Schemes) Directions 2020:

- (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~~ second 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 after the end of the Term.”

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.”

5. Paragraph 1 of Schedule 3 to the wholesale services agreements shall be amended by inserting the words, “the payment schedule referred to in Clause 7.6(j) or in”, after the words, “specified in”.