

Summary of Responses and Notice of the Commission's Decision on Standard Licence Condition B1 (Duty to provide default services) June 2017

This document describes the decisions the Commission has taken following a consultation on Standard Licence Condition (SLC) B1 (Duty to provide default services) – this licence condition was suspended from the general licences of many Licensed Providers since 2012. This consultation invited responses from Licensed Providers, Scottish Water and the Central Market Agency (CMA) by way of a proposal letter issued on 3 May 2017, with responses welcomed by 25 May 2017.

Having considered all of the consultation responses and in view of its function and duties, the Commission has decided to remove all suspensions of Standard Licence Condition B1 with effect from 1 August 2017.

This document has been sent to the Scottish Government; Scottish Water; the Central Market Agency Limited; and all Licensed Providers participating in the Scottish water market. It is also on the Commission's website: www.watercommission.co.uk.

Background

SLC B1 requires each Licensed Provider to offer default services to any eligible customer who requests them. The default services act as a safety net for all customers to ensure they receive an appropriate minimum level of service at (a) a particular standard and (b) at a price not exceeding the maximum amount (the **default package**), while still allowing a customer the freedom to contract with a Licensed Provider for services on different terms if they so choose.

In 2012, after considering the number of Licensed Providers and the regulatory burden which the requirement to provide the default package posed, the Commission sought to find ways to encourage market entry, support the development of the market and bring greater choice to customers. For this reason, the Commission used the provision in paragraph 9 (now paragraph 7) of SLC B1 to suspend SLC B1 from several general water and sewerage licences (other than those held by Business Stream) until further notice.

The suspension of SLC B1 was implemented by issuing letters to each Licensed Provider affected, which acted as notification that the condition was suspended until further notice. In these letters the Commission made clear that we intended to keep the suspension of SLC B1 under review to determine whether, in all the circumstances, it would be appropriate to reinstate its application.

Since we first suspended SLC B1 there has been a marked increase in the number of retailers competing for non-household customers' business, to the benefit of customers. In addition, the Commission has updated market arrangements and implemented measures to ensure a level playing field and that the market works well for customers¹.

As indicated, the Commission has continued to review the suspension of SLC B1. As part of this review and in light of the developments of the market framework described above, the Commission decided no longer to suspend SLC B1 in water and sewerage licences granted since August 2016. This decision was monitored and formed part of our review of the need for the continued suspension of SLC B1 in all existing licences. The continued market entry activity since this date suggests that the requirements of SLC B1 have not acted as a significant barrier to entry to the market and that the inclusion of the condition does not present a disproportionate regulatory burden on the Licensed Providers holding a general licence. To further support this review, the Commission invited views from the industry on our proposal to remove the suspension of SLC B1 as part of its consultation exercise of May 2017.

The Commission has now concluded its review of the suspension of SLC B1 in existing licences. Having regard to this review, and also to the responses received to the May 2017 consultation, the Commission believes that it is in customers' interests for all Licensed Providers to be subject to the duty to provide the default package to any eligible customer who accepts the terms of the default package.

Consistent with our thinking outlined in the consultation exercise of May 2017, the Commission believes that the switching back on of SLC B1 in general licences granted before August 2016 will bring more consistency to all Licensed Providers' licence conditions and ensure a level playing field in Scotland.

¹<http://www.watercommission.co.uk/UserFiles/documents/Governance%20and%20SLC%20Consultation%20-%20May%202016%20-%20Final.pdf>

Summary of Responses

We received six responses from Licensed Providers to the consultation letter of 3 May 2017. We thank these Licensed Providers for their comments.

Except for one case all respondents supported the Commission's proposal to remove the suspension of SLC B1 in all general water and sewerage licences. Additionally, some respondents flagged ancillary comments regarding the implementation of the proposal.

This support for removing the suspension of SLC B1 is welcomed and we expect that all Licensed Providers will comply with the licence requirements on default services.

Below we set out a summary of comments received together with our views on those comments. One respondent commented that removing the suspension would bring additional cost, and that customers on default services would not receive the same commitment from their Licensed Provider to reduce water usage. Additionally, the respondent commented that an obligation to provide default services would impact on their ability to bring transparency to the market.

We recognise that the duty to offer default services can have implementation costs, however we believe that default services provide an important safeguard to customers and ensure trust is embedded in the market. We also note that the requirement to offer default services to customers does not restrict Licensed Providers from offering their own tariff frameworks, nor restrict the customer's ability to choose an alternative deal should they wish to. As a result, we do not believe this will have a negative impact on transparency. As such and in line with our statutory duty to promote the interests of customers, the Commission takes the view that removing the suspension of SLC B1 is necessary to preserve the integrity and reputation of the market whilst ensuring that all Scottish customers receive the same level of protection.

Two respondents proposed additional time from the publication of the Commission's decision to allow Licensed Providers to make the changes to their systems necessary to implement SLC B1. The remaining two responses supported the proposal without further comments.

The Commission recognises the importance of ensuring smooth and effective implementation and has decided that SLC B1 will come into effect in all water and sewerage general licences 6 weeks from the publication of this decision. The Commission believes that this gives Licensed Providers a reasonable amount of time to take steps to ensure full compliance with SLC B1.

One respondent requested further clarification on the application of SLC B1.

Under SLC B1, each company that holds a general water services licence and/or a general sewerage services licence is bound by the Commission's Default Directions². The Default Directions require the Licensed Provider to offer a set of retail services (the **default services**) to a particular standard (the **default standards**) and at a price not exceeding a maximum amount (the **default maximum tariffs**). The Default Directions define the minimum level of retail services which a customer can require a Licensed Provider to provide, and the maximum price that Licensed Provider may charge for those services. It is important to note that general licence holders must offer default standards to all customers in Scotland.

²<http://www.watercommission.co.uk/UserFiles/Documents/161005%20default%20directions.pdf>

Licensed Providers may agree with customers to provide a different level of service at the same or a different price. However, Default Standards will act as safety net for all Scottish customers to ensure they receive an appropriate minimum level of service.

The Commission believes that the current guidance³ regarding the application of SLC B1 is consistent with the requirements of the default package obligations. In particular, the guidance is clear that customers are free to enter into alternative arrangements with Licensed Providers should they choose to do so.

Next Steps

Following due consideration of all the consultation responses and in view of its function and duties, the Commission has decided to remove all suspensions of Standard Licence Condition B1 (Duty to provide default services) in all general licences granted to Licensed Providers, who currently have this condition suspended. This change will take effect from 1 August 2017.

To effect the change set out above, the Commission will issue directions removing the suspension of Standard Licence Condition B1 (Duty to provide default services) to each Licensed Provider.

³<http://www.watercommission.co.uk/UserFiles/Documents/080208%20Website%20note%20on%20defaults.pdf>